



IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

NO. **76-1852**

RICHARD JAMES GENCO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

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INDEX

TABLE OF CONTENTS

| | Page |
|---|--------------|
| OPINION BELOW | 2 |
| JURISDICTION | 2 |
| QUESTION PRESENTED | 2 |
| CONSTITUTIONAL PROVISIONS INVOLVED | 2 |
| STATEMENT OF THE CASE | 3 |
| REASONS FOR GRANTING THE WRIT | 4 |
| CONCLUSION | 26 |
| APPENDIX A: | |
| Opinion of the United States Court of Appeals for the Fourth Circuit | A.1 |
| APPENDIX B: | |
| Affidavit – In the Matter of the Application of the United States of America for an Order authorizing the installation of a device to register telephone numbers called from the Telephone Number 301/679-6473 | A.23 |
| APPENDIX C: | |
| Affidavit – In the Matter of the Application of the United States of America for an Order authorizing the Interception of wire communications | A. 45 |

AUTHORITIES CITED

| <i>Cases</i> | <i>Page</i> |
|--|-------------|
| <i>Aguilar v. Texas</i> , 378 U.S. 108, SCt. 1509 12 LEd. 2d 723, 1964 | 11 |
| <i>Spinelli v. U.S.</i> 393 U.S. 410, 80 SCt. 584 21 LEd. 637, 1969 | 11 |
| <i>U.S. v. Bobo</i> , 477 F2d 974 (4th Cir. 1973) | 16,17 |
| <i>U.S. v. Bernstein</i> , 509 F.2d 996, 1001-02 (4th Cir. 1975). . | 23,24 |
| <i>U.S. v. Bynum</i> , 475 F.2d 832, 837 (2d Cir. 1973) . . . | 24,25 |
| <i>U.S. v. Curreri</i> , 388 FSupp. 607 (D. Md. 1974) | 17 |
| <i>U.S. v. Donovan</i> , 17 Crim. L. Rptr. 2029 (S.D.N.Y. 1974) aff'd, 508 F.2d 837 (6th Cir. 1975) | 23 |
| <i>U.S. v. Giordano</i> , 416 U.S. 505, 508 (1974) | 23 |
| <i>U.S. v. Staino</i> , 358 FSupp. 852 (E.D. Pa. 1973) . . . | 13,15,17 |

Statutes

| | |
|----------------------------|---------|
| 18 U.S.C. 2518(c)(3) | 4,14,23 |
|----------------------------|---------|

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The Petitioner, Richard James Genco, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above case on May 25, 1977.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is included as Appendix A of this Petition.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was filed on May 25, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). This Petition is timely pursuant to Supreme Court Rule 22, Paragraph 2.

QUESTION PRESENTED

1. Did the United States Court of Appeals err in holding that the Government had made an adequate showing that alternative techniques to wire-tapping were not likely to succeed.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched."

STATEMENT OF THE CASE

On February 5, 1975, Petitioner, Richard James Genco, along with seven (7) other individuals, was indicted on one count of violation of 18 U.S.C. 1955 (gambling). After the indictment, there were pre-trial proceedings wherein the Petitioner moved to suppress the evidence obtained by the Government pursuant to the search and seizure of September 20, 1974. Said search and seizure was the result of information gathered by prior wiretaps authorized under Misc. No. 708-A, 936 and 944. No. 708-A is reprinted at Appendix B. No. 944 is reprinted at Appendix C. Petitioner's Motion to Suppress was denied by the trial court by Memorandum and Order dated June 13, 1975. In lieu of trial by jury, Petitioner agreed to submit his case before the trial court on an agreed statement of facts, which proceeding was held on December 2, 1975. At that time Petitioner was found guilty of the one count indictment by the trial court. On March 19, 1976, Petitioner was sentenced to two (2) years imprisonment all but ninety (90) days suspended. Petitioner appealed to the Fourth Circuit United States Court of Appeals, which affirmed his conviction (Opinion Judge Winter filed May 25, 1977).

REASONS FOR GRANTING THE WRIT

I.

THE UNITED STATES COURT OF APPEALS
ERRED IN HOLDING THAT THE GOVERNMENT
HAD MADE AN ADEQUATE SHOWING THAT
ALTERNATIVE TECHNIQUES TO WIRETAPPING
WERE NOT LIKELY TO SUCCEED.

A. *Success of Alternative Techniques*

Petitioner submits that the Affidavits to obtain permission for wiretaps in this case clearly demonstrated that the Government had ample information identifying Petitioner as well as the other principals in the alleged gambling conspiracy prior to such request. Petitioner has found no other reported opinion from this Honorable Court or any other Court in which the Affidavit of the Government itself demonstrated that wiretaps were unnecessary to successfully conclude a criminal investigation. For these reasons, Petitioner believes this case merits review by this Honorable Court, because, if the Government will be allowed to wiretap in situations where its own information shows that alternative techniques are working, then Section (c) (3) of 18 U.S.C. 2518 becomes meaningless.

The following information was known to the Government prior to the *first* wiretap request:

(1) The general allegation of probable cause as to the gambling conspiracy:

"I have participated in the investigation of these offenses committed by those persons named above and as a result of my present participation in this investigation and of reports made to me by Agents under my direction, I am familiar with all circumstances of the offense. On the basis of that familiarity, I allege the facts contained in the paragraphs below to show that:

(a) There is probable cause to believe that Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson, and others as yet unknown, have been and are now presently engaged in an illegal gambling business which makes use of communication facilities for the purpose of conducting this illegal gambling business and which involves five or more persons and has a gross revenue of \$2,000.00 or more in any single day and has been and remains in substantially continuous operation for a period in excess of 30 days. Through investigation conducted by myself and other Special Agents of the Baltimore Federal Bureau of Investigation Office, I believe that this illegal gambling business operates in the following manner:

Robert "Fifi" London, Albert Carmen Isella and Richard "Dick" Genco are in partnership in the "lay-off" part of an extensive illegal gambling business. This "lay-off" partnership specializes in purchasing heavily bet numbers or other wagers from the lower level numbers operators and is necessary for these backers to insure that if they were a "hit" on a heavily bet number, they would not lose a great deal of money. From my

experience, I know that the "lay-off" usually occurs between 2:00 p.m. and 4:00 p.m. and is accomplished prior to the first digit of the winning number being determined. Information set forth indicates that Robert Leroy Himes and Susan Himes are handling the lay off office for London, Isella and Genco and they will make daily calls except on Sunday to the backers to determine which numbers they choose to lay-off. Information set forth below also shows probable cause that Melvin Eugene Brzostek, Robert John Thibou, Orva Elerson "Lucky" Robinson, and Ambrose Robinson and other backers as yet unknown, are the backers of large scale illegal numbers lotteries from whom London will take lay-off wagers. This illegal gambling business is conducted in violation of the Annotated Code of Maryland, Article 27, Section 240 (Bookmaking) and Section 356 (Lottery) and is thereby in violation of Sections 1955 and 371 of Title 18, United States Code.

(b) There is probable cause for belief that evidence of these offenses will be obtained through the installation of a device to register telephone numbers called from the telephone number 301/679-6473 said registration being herein applied for.

(c) There is probable cause to believe that the telephone number 301/679-6473 subscribed to in the name of Susan M. Price, 1028 Erwin Drive, Joppa, Maryland, has been and is being and will be used for carrying out the offenses set out in paragraph 3(a) above, all of which appears more fully hereafter."

(2) Detailed allegations of informant reliability:

"Informant number one has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately four years, said information relating to gambling activity in the Baltimore area. All of the information furnished by informant number one has been corroborated by independent investigation and has always proved to be accurate. Information from this informant has resulted in the arrest and conviction of approximately 25 individuals on Federal gambling charges in the past two years.

Informant number two has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland area. All of the information furnished by informant number two has been corroborated by independent investigation by the Baltimore Office of the Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. This informant has been associated with members of the gambling community in Baltimore for over 10 years and has been involved in wagering activities for a like period of time.

Informant number three has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately two years, said information relating to gambling activity in the Baltimore, Maryland area. All of the information furnished by informant number three has been corroborated by independent investigation by the

Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. Information from this informant has resulted in the arrest and conviction of at least six individuals on Federal Gambling charges in the past year. Also, information furnished by this informant and subsequently turned over to the Baltimore City Police Department has resulted in the arrest and conviction of approximately eight individuals on various State violations during the past year.

Informant number four has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately 10 years. This information has related to gambling activity in the Baltimore area. This source has associated with members of the Baltimore gambling community for a number of years and has directly engaged in wagering activities. Information from the informant has resulted in the arrest and conviction of a major gambling figure on Federal gambling charges. All of the information furnished by the informant number four has been corroborated by independent investigation conducted by the Federal Bureau of Investigation and local authorities and has always proven to be accurate.

Informant number five has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland area. All of the information furnished by informant number five has been corroborated by independent investigation by the Federal Bureau of Investigation and that information has always proven to be accurate. This informant has been involved in wagering activities in the Baltimore area for more than nine years and is

personally acquainted with many of the Baltimore gambling figures. Information furnished by this informant has led to the arrest of eight individuals on Federal gambling charges and the conviction of one individual on Federal gambling charges. The remaining seven are awaiting trial."

(3) General allegations as to Genco's involvement in the gambling operation:

"On May 25, 1974, informant number one advised Special Agent David E. Faulkner of the Baltimore, Maryland Field Office of the Federal Bureau of Investigation, who advised your affiant that as of May 25, 1974, Robert "Fifi" London, Richard "Dick" Genco and Albert Isella are in partnership in the major numbers lay-off operation for the Baltimore area. Informant number one advised that London has a 75 percent interest in this operation while Genco and Isella share a 25 percent interest. Informant number one learned of this through his direct contact with Albert Isella."

(4) Particular allegations as to the state of the operation on July 17, 1974:

"On July 17, 1974, informant number one advised your affiant that on July 13, 1974, the lay-off operation headed by London, Isella and Genco had incurred a substantial loss as a result of heavy wagering on the number "121" which was the winning number for the day."

(5) Particular allegations of informant concerning the routine, records, and observations of Richard Genco:

"Informant number two advised your affiant on May 7, 1974, that Richard Genco and Robert

"Fifi" London are conducting the major gambling "lay-off" operation for the Baltimore area. Informant number two has learned of this through conversations with Richard Genco and London regarding the "lay-off" business. Informant number two advised that as of this date an unknown male will call the individual numbers backers on a daily basis between the hours of 1:00 and 3:30 p.m. in order to accept lay-off bets. Informant number two stated that Genco will settle up with certain individual backers on Monday, Tuesday and Wednesday evenings for the previous week's lay-off bets. The settling up involves an exchange of money only and the backer is generally advised in advance what he owes or what is owed to him for the previous week's work. Informant number two further advised on May 23, 1974, that he has observed Genco keeps a list of numbers accounts in his car in the event the backers question what is owed. Informant number two also advised that from his personal observations this list contained code names for at least one dozen numbers backers and the total tally for the previous week's lay-off for that particular list was approximately \$20,000.00."

(6) Allegations that Richard Genco stated Eugene Brzostek was laying off to Genco:

"Informant number two advised on June 3, 1974, that he had learned through conversations with Melvin Eugene Brzostek which occurred during May, 1974, that Brzostek is the backer of a large numbers operation handling approximately twelve writers. Informant number two advised that he had learned from Richard Genco during the same period that Brzostek is laying off to Genco."

(7) Allegations that, as a result of personal contact with Genco, it was learned that Genco would contact London if the track for the winning number was to change and that Isella and Genco and London were partners:

"Informant number two further stated that he knew through personal contact with Genco that Genco would contact London in order to change the track from which the winning number for the day would be determined for the Baltimore area. Informant number two advised that it is custom in the gambling community in Baltimore for this type of change to be made by the principal figure in the "lay-off" business. Informant number two also advised that he has learned through conversations during the last month with numbers backers who lay-off to Albert Isella that Isella is also a partner in the lay-off operation with London and Genco."

(8) Allegations that various backers laid off to London's operation, based on statements of the principals themselves.

(9) Allegations of informants based on statements of those involved that Bobby Himes or his wife handled London's lay-off operation from Himes' home in Joppa on line 301/679-6473 at certain specified times of day. (Reprinted in Appendix B)

Item (2) seeks to establish the credibility and reliability of the informants in this case under the guidelines enumerated in *Spinelli v. United States*, 393 U.S. 410, 80 SCt. 584, 21 LEd. 637, 1969, and *Aguilar v. Texas*, 378 U.S. 108, SCt. 1509, 12 LEd. 2d 723, 1964, Items (3), (5) and (7) contain numerous alleged statements of Genco to these informants about his involvement in the operation. Except for the totally unsupported contention that the informants will not testify

because of their fear of retribution (see *infra*, p. 22), there is absolutely no reason advanced why one or more of these individuals cannot be made to testify against Genco. Alternatively, there is no reason advanced why additional surveillance, which could easily be maintained at the times and places of the conspiracy's transactions consistent with information given to the informants by Genco and others, would not succeed.

Item (5) standing alone is a classic example of crucial information obtained from "credible informants" which, through the application of established and proven surveillance techniques, would ultimately lead Government agents to full and complete identification and destruction of the illegal conspiracy alleged. Vital information received by Government agents, that Genco regularly carried on his person or in his automobile written records containing numerous backers and the balances due to them or owed by them to the conspirators, presented to the Government an immediate opportunity to ascertain the identity and location of these backers as well as revealing the "settling up" procedure employed by the conspirators with their customers, which, if followed to its logical end, would necessarily reveal all of those doing business with the three principals. Once this effort has been completed, further investigative tools such as Grand Jury investigation and employment of grants of immunity (qualified or otherwise) could without any question have led to the indictment and ultimate conviction of the ringleaders of the illegal gambling operation alleged. Certainly at that stage of the investigation it is obvious that the Government could conclude its efforts by obtaining search and/or arrest warrants and executing same.

Should the Court not agree for any reason that Item (5), if properly pursued, would result in the revelation of the entire conspiracy alleged, it is next contended that Items (7) and (8) enumerated, *supra* in conjunction with Item (5) are sufficient on their face for the Court to find that the entire operation could have been identified, located, and brought to an end with normal surveillance. These items specifically indicate that certain backers dealt directly with Isella or with London. The location of both of these principals was known to the Government. Appellant Genco either settled up with these backers on his own route, or Isella and London settled up respectively with these backers themselves. In either event, additional surveillance would reveal the identity and location of all of the backers, each of the backers' contact with the conspiracy, the "where" and "when" of each contact, and the exact role of each of the principals in this conspiracy.

Rather than pursue any of these major and extremely promising leads to their fruition, the Government chose to request the Pen Register Device and thereafter the wiretaps in question. Petitioner Genco contends that these requests were defective, inasmuch as the allegation that "normal techniques would not succeed" was totally without substance and contradictory on its fact to the wealth of information available to the Government enumerated *supra*. In *U.S. v. Staino* 358 F. Supp. 852 (E.D.Pa., 1973), the Court faced similar contentions concerning the "necessity" conspiracy to possess and deal in counterfeit Federal Reserve Notes. Rejecting the defendant's motion to suppress such evidence as was obtained by those techniques, the Court stated at pp. 856-857:

"The defendants contend that, even if probable cause was established to believe that they were

using the phones to engage in illegal activity, the order authorizing the wiretap should not have been issued because the ineffectiveness of using other investigative procedures was not established by the affidavit as is required by 18 U.S.C. §2518(3)(c).

It is clear that the statute does not require the government to use a wiretap only as a last resort. Indeed, the provision does not even require the government to employ any other investigative procedure before requesting the issuance of an order authorizing the interception of wiretap communications. The burden on the government is, therefore, not a great one, and it has been adequately fulfilled in this instance.

The defendants argue that according to statements in the affidavit, sufficient evidence existed prior to the wiretap to convict both Viner and Staino if that evidence was shown to be true. But, although it is likely that probable cause existed for these arrests, it cannot be supposed that there was the faintest reason to think that the trail ended there. By its nature dealing in counterfeit notes involves, in most instances, many individuals who would be liable as co-conspirators. And even though the investigative agents were able to uncover the first layer of the operation, a substantial likelihood existed that other persons were involved in the same enterprise. Plainly, normal investigative procedures had ceased to be effective once the visible members of the hierarchy, if one existed, were discovered. To suppose that the investigation should have been terminated at this point is unrealistic. These men were merely the tip of the iceberg; they could always be replaced. In order to root out the offense, those who were ultimately responsible — individuals who were the source of the counterfeit

notes and who placed them into circulation — had to be found, and the affidavit amply demonstrates that this would have been impossible by any means other than by the use of wiretaps."

While the language of *Staino* appears to discuss what the Government does *not* have to prove to sustain its contention that eavesdropping is necessary, it is clear that the Court made positive findings before upholding the electronic surveillance, and that *these findings were the basis of its decision*. Initially, the Court found that the Government did not have to actually exhaust all other investigative techniques before electronic surveillance would be allowed; this conclusion is consistent with the statutory language that the Government need only show that *either* such techniques had been tried, unsuccessfully *or* that such techniques appeared unlikely to succeed, in order to obtain permission for a wiretap. Merely to emphasize this alternative burden upon the Government, the Court next states that there is no need for the Government to show that even one technique had been tried and had failed, as long as the Government shows that normal investigative techniques are unlikely to succeed in a given case.

In applying these principles the *Staino* court carefully considered prior results of the counterfeiting investigation. No ringleaders ascertained. No middle level people ascertained. The source of the forgery unknown. No way to infiltrate the unknown. No way to call unknown key witnesses before the Grand Jury. *After these observations, the Court upholds the wiretaps.*

Contrast the *Staino* situation to the present case. Identity and place of operation of ringleaders known. A

number of backers known. The lead to the rest of the backers, (identity of the three principals, the knowledge of Genco's list, Genco's route, and the informants' specific statements that certain backers dealt directly with Isella or London), known. Pay off schedule known in substantial part. The conclusion of this Court has to be that the major part of the "iceberg" was known to the authorities. Important, specific, and multiple leads had been discovered and verified, items (3)–(9) *supra*. If this case is anything, it is a classic example of one in which normal investigative techniques would succeed, given the facts known to the Government. Certainly, if 2518(c)(3) puts any burden upon the Government, that burden of proof is quite dismally unmet in the affidavits in the instant matter. Moreover, because there is that burden of proof, the mere allegation that "normal techniques are unlikely to succeed" is not binding upon this Court. To so rule would make a nullity of the Judicial Review of the affidavit very specifically commanded in Title III.

The Fourth Circuit relied on its prior decision of *U.S. v. Bobo* 477 F2d 974 (4th Cir. 1973) in which the wiretapping of a gambling business was upheld. Appellant believes the Government's reliance on *Bobo* is entirely misplaced; rather, the Court's discussion of "alternative techniques" distinguishes *Bobo* from the present case. On p. 983 of the *Bobo* opinion, it is clear that the Court accepted on its face the contents of the Affidavit of Special Agent Fontanella, who stated among other things the following: (1) "normal investigative procedures reasonably appear to be unlikely in establishing... what is the full extent of the interstate gambling conspiracy, who are involved as co-conspirators, aiders and abettors, and what is hierarchy of this illegal gambling operation". (2) "Physical surveillances on gambling operations heretofore mentioned have failed to furnish

substantial information of a federal gambling violation because there is little or no personal contact between these persons".

(3) "Furthermore, the utilization of undercover agents would not likely prove a federal violation due to the small number of people who have access to the overall plan or scheme."

Contrast the *Bobo* rationale to the facts of the present case. Informants are in contact with the hierarchy of the operation and thus definitive information about the whole scheme has been unearthed. Moreover, the physical surveillance of Genco and others has yielded a wealth of information concerning the scope, members and hierarchy of the conspiracy. Finally, the actual hierarchy has been fully disclosed to Government agents. In these circumstances 2518(c)(3) has obviously not been complied with.

A strikingly similar result was reached in the Maryland District in the case of *U.S. v. Curreri* 388 FSupp 607 (D. Md. 1974). In that case, the Court determined that the *failure to allege* that "normal investigative techniques were unlikely to succeed" in the affidavit was fatal. But more essential to this case, Judge Miller held that besides the failure to include the statutory language, the affiants had also *failed to show* that particular techniques appeared likely to fail. In light of *Curreri* and *Staino*, let us examine how the Government alleges that normal techniques would fail in this case.

First, the Government concludes that infiltration is impossible:

"Infiltration of the gambling operation by an undercover agent does not appear to be possible in this case but even if such infiltration were possible, it would only be at the lowest level of the

operation which would not result in evidence being obtained regarding involvement of the backers and the lay-off part of the operation. Nor would such infiltration, even if possible, ever be expected to discover the full scope and extent of the operation."

It is suggested that these allegations are patently absurd. The statement "infiltration... does not appear to be possible" belies the fact that infiltration of the organization by five allegedly reliable and credible informants has already occurred. With the valuable information, detailed in items (3)-(9) *supra*, being supplied regularly by these individuals, the Government cannot seriously contend that there existed the slightest need for infiltration by a Government agent. Furthermore, additional surveillance, based upon the identification of the gambling operation's participants, their schedule, their movements, and Genco's records, would have yielded the "full scope and extent of the operation." Particularly, observation of London, Isella, and Genco, especially on the latter's route when he was allegedly "settling up" with the various backers, would have netted the identity of every single backer of this operation within reasonable time. Just as specious as the "argument" for infiltration per se, is the Government's "contention" that such infiltration even "if possible" would be at "the lowest level of the operation". Inasmuch as the identity of the *highest* level of the operation, and a substantial number of the *middle* level of the operation, were well known to the Government at the time of the application for wiretaps and pen register, this discussion of the limitation of infiltration is at once irrelevant and, more important, misleading. The Government sought to obtain authorization for electronic surveillance on the claim that infiltration was not a practical method to pursue in order

to identify the principals of the operation, when in fact the principals had already been fully identified by the informants elsewhere in the affidavit. For all the reasons stated herein, the Court should conclude that the "inability" of infiltration to succeed, applied to in this case is irrelevant and immaterial to the Government's contention that "normal investigative techniques were unlikely to succeed in this case".

Besides "infiltration", the Government argues that "Grand Jury witnesses" would also fail in this matter:

"Calling witnesses before the Grand Jury would not result in the gathering of sufficient evidence to uncover the full scope and extent of the operation. Only those individuals integrally requisite knowledge regarding the full scope and extent of the operation. Witnesses, even if immunized, are reluctant to incriminate themselves and their close working associates. Together their testimony would require immunization and non-prosecution of those who are the principals of the operation. But, even if obtained, their testimony is not corroborated."

First, the Government states that Grand Jury witnesses would not reveal "the full scope and extent of the operation", an obvious parroting of the argument against "infiltration", and for the same reasons, an utter irrelevancy. The observations of five informants, the identification of the principals and several backers, the known schedule of Genco's movements, the alleged material in Genco's possession; all these facts obviate the Government's need to "penetrate a wall of secrecy" through Grand Jury testimony (or infiltrations, *supra*). Again, the Government's premise, that Grand Jury witnesses are needed at all (to identify the scope of the operation) is simply contradicted by the myriad of

allegations it presents within the four corners of its own affidavit. The Government's conclusion that "witnesses are reluctant" to talk, even with "immunity" granted, is complete nonsense. This assertion argues that the hard, persistent questioning of any of the backers, who were in large supply identified, *both before and certainly after* the pen register's use, would have yielded nothing, even on pain of contempt. Given the broad and effective use of immunity by the United States Attorney's Office in this jurisdiction, asking the Court to accept this incredible statement as valid in *this* case is to defy reality. As unrealistic as the previous language may be, the bold allegation that immunity would "require . . . non-prosecution of principals" is an outright effrontery to this Court. There were so many middle and lower level backers now identified for possible "non-prosecution" that there was no need for the Government to give up the prosecution of any of the principals in this case. For these reasons, the Court should entirely disregard the alleged likelihood of the failure of Grand Jury witnesses in this case.

Furthermore, the Government's statement that they are reluctant to immunize principals is altogether inapplicable in this case, wherein a named principal is not charged at all in the indictment issued in this matter. The Petitioner, Richard Genco makes the following query: Has this principal been cooperating with the authorities during their investigation of this alleged gambling conspiracy. If this principal has been cooperating with the Government, and if in such capacity he did furnish the Government with information concerning the nature and extent of the alleged operation, then the Government knew or should have known that normal investigative techniques would succeed in this case and any assertion which the Government has made to the contrary was

not made in good faith. The Government never contended that this principal was not in fact so cooperating, so this Court must assume such cooperation to explain the lack of prosecution of this individual. (Unindicted co-conspirator, Albert Isella)

While the Petitioner vigorously denies the allegations of the Government that certain "techniques" appeared likely to fail, they point out to the Court that the Government completely omits discussion of the one obvious "technique" insufficiently employed in this case — physical surveillance. Surveillance of London's office had already corroborated the informants' observations as to visits by Isella, Genco, and a number of backers. Surveillance of Isella would have likely revealed those backers whom the informants asserted dealt directly with Isella. Surveillance of Genco, especially on his rounds from London's residence to the various settlement spots with the backers would have shortly revealed all the backers who dealt with the alleged operation. All of these activities could have been instituted and completed within a reasonable time. In point of fact, the limited surveillance of Genco, London and Isella had already borne fruit, by serving to identify a half-dozen backers, at the time of affidavit 708-A. (After the use of the pen register and further surveillance, *all* of the backers were identified and listed in the affidavit to 944 and the search warrant). In fact, the failure to positively reveal to the Court how the Government had been able to succeed is as pernicious and, it is suggested, fatal to the affidavit, as are the spurious allegations concerning alleged unlikelihood of normal techniques to succeed, which are irrelevant to the case at hand.

The limits of rationality are surpassed when the Government sought to obtain the last wiretap authorization through its affidavit 944 (Appendix C). At that point in time, through the use of the pen register, the Government had ascertained the identity of some 33 locations and persons who were "fueling" this gambling operation. This factor seems to have been completely overlooked by the Fourth Circuit in its Opinion, specifically at pages 12-14. That Court like so many others, becomes lulled into taking the allegations of the affidavits at face value without looking at their logical consistency or lack thereof. In this particular case, the logical *inconsistency*, which should be fatal to the Government, is the allegation on the one hand that normal investigative techniques will not succeed, and the factual demonstration on the other hand that normal investigative techniques are not only succeeding in regard to the principals but as to identifying the entire gambling operation itself. This case is the exact situation envisioned in *Staino*, wherein the root and the branches of the conspiracy are known to the Government so that no reason appears for the allowance of a wiretap. It is of utmost importance for this Honorable Court to deter the Government from just applying for wiretaps in any case regardless of the state of its information or investigation, and a reversal of the Fourth Circuit and the United States District Court for the District of Maryland would serve such a purpose.

B. *Lack of Minimization*

Petitioner adopts the following from the decision of the Fourth Circuit:

We agree, . . . The wiretap statute provides that

[t]he contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations.

18 U.S.C. §2518(8)(a). The statute does not contain discretionary language; it is an absolute command. Interceptions "shall" be recorded, if "possible."⁶ As another federal court has noted, "the wiretap statute requires the recordation of intercepted communications by *any* means authorized by the chapter,..." *United States v. Buckhanon*, 374 F.S. 611, 615 (D. Minn. 1973) (emphasis in the original).⁷ Here, the government has made no attempt to justify its failure. It has not demonstrated that recordation was impossible.... (footnotes omitted)

Petitioner next urges, contrary to the Fourth Circuit, that suppression of the evidence was the proper course in this case for the following reasons:

Total suppression has been sanctioned as the appropriate remedy not only for violations of the minimization provision but also for situations where inventory notice was not extended, *see, e.g., United States v. Donovan*, 17 Crim. L. Rptr. 2029 (S.D.N.Y. 1974), *aff'd*, 508 F.2d 837 (6th Cir. 1975), where the application order failed to identify as known offender whose communications were to be intercepted, *see, e.g., United States v. Bernstein*, 509 F.2d 996, 1001-02 (4th Cir. 1975); and where the Title II application had not been authorized by a proper party, *see, United States v. Giordano*, 416 U.S. 505, 508 (1974).

Of course, not every violation of Title III results in an unlawful interception sufficient to mandate total suppression. As Judge Butzner noted in the recent case of *United States v. Bernstein*, 509 F.2d 996 (4th Cir. 1975):

A violation is material only if Congress intended the statutory provision that was not followed to be a "precondition to obtaining . . . intercept authority." Statutory preconditions, teaches the court, "directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." In contrast, violation of a statutory provision that does not "affect the fulfillment of any of the reviewing or approval functions required by Congress," does not render an interception unlawful within the meaning of §2518(10)(a)(i). Whether a statutory provision is a precondition to a valid order depends, then, on its role in the Act's system of restraints on electronic surveillance. 509 F.2d at 999.

The determination of whether there has been proper minimization as required by Title III is clearly within the purview of the court's reviewing function. In fact, since minimization procedures need not be set out in the interception order, *see Note*, 26 Stan. L.R. 1411, 1432 n. 107 and cases there cited (1974), minimization standards are more often reviewed by the court after the fact than they are approved or disapproved in advance. In evaluating minimization, the totality of the interceptions must be examined and, of course, recordings of all the interceptions or transcriptions made therefrom form the proper point of inquiry, *see United States v. Bynum*, 475 F. 2d 832, 837 (2d Cir. 1973). A failure to record any significant segment of the interceptions thus seriously and materially affects the

fulfillment of the court's reviewing function. And a failure to record eighty percent of interceptions so fragmentizes the court's inquiry as to transforms its assessment of the minimization question into a highly artificial exercise.

In *Bynum, supra*, 475 F.2d 832, the court remanded the case to the district court for evidentiary hearings on the issue of minimization. The circuit court was itself unable to determine if the Government had complied with Title III minimization requirements since "... , all conversations were recorded but only those presumably inculpatory were ever transcribed. *The mischief lies in the interception obviously and what was not transcribed remains unknown.*" 475 F.2d at 832 (emphasis added). This court also finds its review hampered by an incomplete record, but, unlike the *Bynum* case, the record here must remain incomplete.

Furthermore, a record that is deliberately and selectively left incomplete is an edited record. 18 U.S.C. §2518 (8) (a) (1970) requires, *inter alia*, that the recording "shall be done in such a way as will *protect* the recording from editing or other alteration." (emphasis added). Not only are recordings composed of bits and pieces of interceptions easier to edit than recordings of entire interceptions, *see Bynum, supra*, but selective recordation is itself tantamount to editing. To "edit" is to modify by excisions, curtailments or the like. Merriam-Webster New International Dictionary (2d Ed. 1948). Since to "curtail" is to reduce, Merriam-Webster New International Dictionary (2d Ed. 1948), the Government has in effect edited the tapes by reducing the number of interceptions recorded to twenty percent rather than one hundred percent as required by the statute.

Here, the Government's willful and deliberate nonrecording of eighty percent of the total interceptions is a violation of the statute that has not only affected the court's reviewing function but has made proper review nearly impossible. Petitioner submits that the blatant illegality of the Government's action in carrying out the interception order has rendered the entire interception procedure unlawful, and mandates total suppression of the evidence.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that a writ of certiorari to the United States Court of Appeals for the Fourth Circuit should be granted in this case.

Respectfully submitted,

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727-0830

Attorney for Petitioner.

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 76-1663

| | |
|----------------------------------|-------------------|
| United States of America, | Appellee, |
| v. | |
| Maceo Clerkley, | Appellant. |

No. 76-1664

| | |
|----------------------------------|-------------------|
| United States of America, | Appellee, |
| v. | |
| Julius Cottman, | Appellant. |

No. 76-1665

| | |
|----------------------------------|-------------------|
| United States of America, | Appellee, |
| v. | |
| Rufus Jones, | Appellant. |

No. 76-1666

| | |
|---|-------------------|
| United States of America, | Appellee, |
| v. | |
| Robert R. London, a/k/a Fifi London, | Appellant. |

No. 76-1667

| | |
|----------------------------------|-------------------|
| United States of America, | Appellee, |
| v. | |
| Robert Himes, | Appellant. |

A. 2

No. 76-1668

United States of America,

Appellee,

v.

Richard James Genco,

Appellant.

No. 76-1669

United States of America,

Appellee,

v.

John A. Shade,

Appellant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. C. Stanley Blair, District Judge.

Argued January 10, 1977

Decided May 25, 1977

Before WINTER, CRAVEN* and BUTZNER,
Circuit Judges

*Judge Craven died before preparation of this opinion. However, following argument, he expressed agreement with this result.

Harold I. Glaser (Richard M. Karceski and Michael E. Kaminkow on brief) for Appellants in 76-1666, 76-1665, 76-1664 and 76-1663; Peter G. Angelos for Appellant in 76-1668; (Howard L. Cardin on brief) for Appellant in 76-1669; (Jeffrey C. Hines on brief) for Appellant in 76-1667; Marsha A. Ostrer, Assistant United States Attorney (Jervis S. Finney, United States Attorney on brief) for Appellee in 76-1663, 76-1664, 76-1665, 76-1666, 76-1667, 76-1668 and 76-1669.

WINTER, Circuit Judge:

Defendant, together with others, were indicted by a federal grand jury on a charge of violating 18 U.S.C. §1955 (conducting an illegal gambling business.) Defendants London, Jones and Cottman were tried before a jury and found guilty of violating the statute. Defendants Genco, Himes, Shade and Clerkley were tried without a jury and also found guilty as charged. These appeals ensued. At trial, the various defendants moved to suppress all incriminating evidence secured by wiretap. The district judge denied this motion, holding that the government fully complied with the terms of the federal wiretap statute. The correctness of this ruling is the principal issue on appeal. We affirm.

I.

The one-count indictment alleged that fourteen named defendants (including the seven who now appeal), one Albert Isella, and others known and unknown to the grand jury, were engaged in an illegal numbers lottery business. The government's evidence established that the operation was a major "gambling lay off" business. A "lay off" operation enables professional bookmakers to diminish risk by re-betting or "laying off" large bets with other gamblers. *United States v. Box*, 530 F.2d 1258, 1261 (5 Cir. 1976); *United States v. Bernstein*, 509 F.2d 996, 1002 n. 14 (4 Cir. 1975), *vacated* 45 U.S.L.W. 3583 (U.S. Feb. 28, 1977) (No. 74-1486); *United States v. Bobo*, 477 F.2d 974 (4 Cir. 1973), *cert. denied sub nom.*, *Gray v. United States*, 421 U.S. 909 (1975). The proof showed that London, Genco and Isella were partners in overall control of the operation, with London as the senior partner and Genco and Isella having lesser, though substantial, interests. Himes was the clerk and record keeper for the operation. Shade, Clerkley, Cottman and Jones all owned substantial books and regularly "laid off" heavily bet numbers to the London enterprise through Himes, who performed his duties by telephone at his home.

At trial, the government relied heavily upon evidence secured through electronic surveillance. Pursuant to orders signed by Judges Harvey and Young of the district court, FBI agents installed a microphone at London's place of business and "pen register" and intercepting devices at the Himes residence.¹

FBI agents monitored all conversations at London's office whenever any of three partners were present. Recordings were made of those conversations dealing with gambling activities. Logbooks were also maintained, indicating in almost minute-by-minute fashion the identities of persons known to be present, the nature of the conversation then occurring, and the use of recording apparatus (if any). This monitoring lasted from August 24, 1974 until September 12, 1974.

FBI agents also monitored the use of a telephone at the Himes residence. A tape recorder was activated each time an incoming or outgoing call was initiated. Agents "Spot checked" each call to determine its nature. If the call dealt with gambling, monitoring continued and the call would be taped in its entirety. If the call dealt with personal matters, all monitoring and recording would cease. A second set of

¹ - A "pen register" device is used to trace telephone calls. A detailed explanation of its use is found in *United States v. Caplan*, 255 F.S. 805, 807 (E.D. Mich. 1966). After a substantial number of calls were traced to premises where it was reasonably known that numbers gambling was being conducted, the pen register was augmented by an interception device.

The affidavits supporting the applications for orders establish that London's place of business was an office where much of the business was transacted in person but that Himes apparently transacted his business from his home by telephone. Undoubtedly, this is why the agents sought and were granted authority to install a microphone in London's office so that all conversations could be monitored while they sought only surveillance of telephone calls at the Himes' residence.

A. 5

logbooks was maintained, indicating the time, content, and recording (or non-recording) of every call. This activity continued from September 6, 1974 until September 24, 1974.

II.

At trial, defendants moved the district court to exclude all evidence secured by wiretap. The motion was denied. Defendants contend that the evidence should have been suppressed, asserting allegedly fatal variances between government conduct and the terms of the wiretap statute.

A.

Electronic eavesdropping by law enforcement personnel is governed by the federal wiretap statute, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §2510, *et seq.* The wiretap statute was intended to make an accommodation between competing goals of crime control and protection of the right to privacy.² A variety of controls are imposed on police action, intended to "delineat[e] on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized." [1968] U.S. Code, Cong. & Ad. News 2112, 2153..

² - Congress noted that wiretaps were needed to combat the rise of organized crime.

Victims, complainants, or witnesses are unwilling to testify because of apathy, fear, or self-interest, and the top figures in the rackets are protected by layers of insulation and direct participation in criminal acts. Information received from paid informants is often unreliable, and a stern code of discipline inhibits the development of informants against organized criminals. In short, intercepting the communications of organized criminals is the only effective method of learning about their activities.

A. 6

Defendants' initial contention is that the wiretap orders, signed by Judges Harvey and Young, were predicated upon an insufficient showing of need. Under the wiretap statute, intercepted wire or oral communication is rendered inadmissible in evidence unless it was intercepted in compliance with the statute. 18 U.S.C. §§ 2515, 2518 (10)(a). The statute requires that the government apply for a judicial order before electronic surveillance may begin. 18 U.S.C. §2516. In addition, the government is required to show, and the authorizing judge must find, a compelling need for this type of activity. 18 U.S.C. §§ 2518(1)(c), (3)(c). Specifically, there must be a showing that "other investigative procedures have been tried and have failed or . . . reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. §2518(1)(c).

To meet the requirement of the statute, the government, in the instant case, produced two affidavits by FBI Special Agent John Huntley. Each affidavit began by detailing the information already known to the government, primarily through the use of informers, and the reasons why the informers were thought to be reliable. The FBI was apparently well aware of the roles played by London, Genco,

Footnote 2 Concluded:

[1968] U.S. Code, Cong. & Ad. News, 2112, 2159. At the same time, Congress realized that unrestricted wiretapping would completely undermine traditional notions of privacy."

The tremendous scientific and technological developments that have taken place in the last century have made possible today the widespread use and abuse of electronic surveillance techniques No longer is it possible, in short, for each man to retreat into his home and be left alone. Every spoken word relating to each man's personal, marital, religious, political, or commercial concerns can be intercepted by an unseen auditor and turned against the speaker to the auditor's advantage.

Id. at 2154.

Isella and Himes. In addition, the FBI knew that certain premises (London's office and Himes' residence) were being used to conduct the gambling business. However, the identities of many other participants, including most bookmakers who regularly "laid off" bets, were not known. The affidavits concluded with the following recitation:

NEED FOR INTERCEPTION

1. The confidential informants described herein have categorically refused to testify in open court for fear of their personal safety and that of their families.

2. Normal investigative techniques are unlikely to succeed:

(a) Without the testimony of the above-mentioned informants it would be exceedingly difficult to prove the complete nature of the current gambling operation of Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson and others as yet unknown.

(b) It is doubtful that a search warrant, if obtained and executed, would result in obtaining gambling records sufficient to show the complete nature of this gambling operation. From my experience and the experience of other Agents, I know that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the

offenses. This is particularly true in regards to evidence relating to the "lay-off" part of a gambling operation. I have found through my experience and the experience of other Special Agents who have worked on other gambling cases that gamblers frequently do not keep incriminating records. If such records have been maintained, usually gamblers, immediately prior to or during the physical search, destroy these records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish all of the elements of said offenses because such records are difficult to interpret and many times are of no significance without more complete knowledge of the gamblers activities.

(c) There are no known witnesses who could be relied upon to truthfully testify to the violation in question.

(d) Infiltration of the gambling operation by an undercover Agent does not appear to be possible in this case but even if such infiltration were possible, it would only be at the lowest level of the operation which would not result in evidence being obtained regarding involvement of the backers and the lay-off part of the operation. Nor would such infiltration, even if possible, ever be expected to discover the full scope and extent of the operation.

(e) Calling witnesses before the Grand Jury would not result in the gathering of sufficient evidence to uncover the full scope and extent of the operation. Only those individuals integrally involved in the operation at a high level have the requisite knowledge

regarding the full scope and extent of the operation. Witnesses, even if immunized, are reluctant to incriminate themselves and their close working associates. Together their testimony would require immunization and non-prosecution of those who are the principals of the operation. But, even if obtained, their testimony is not corroborated.

3. Due to the manner in which the violations are carried out, the interception of these communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove the commission of this violation.

Defendants suggest that the affidavits fall short of establishing the degree of need specified in the statute. We disagree.

The showing of need made pursuant to § 2518(1)(c) is "to be tested in a practical and commonsense fashion." [1968] U.S. Code, Cong. & Ad. News 2112, 2190. See *United States v. Armocida*, 515 F. 2d 29, 37-38 (3 Cir.), *cert. denied*, 423 U.S. 858 (1975); *United States v. James*, 494 F. 2d 1007, 1015-16 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974). Applying this test, we find that the affidavits constitute a sufficient basis from which the district court could, and did, conclude that wiretaps were essential to the success of the investigation.

Defendants urge that the affidavits are flawed in that they clearly identify four principals (*i.e.*, London, Genco, Isella and Himes). While ample evidence may have been available to arrest and convict this foursome, the government is not precluded from carrying the investigation further. In particular, the government has a valid interest in uncovering the names and locations of various "backers," bookmakers who regularly "lay off" bets and thereby supply the

organization with capital. The situation is directly analogous to that considered by the district court in *United States v. Staino*, 358 F.S. 852 (E.D. Pa. 1973). In *Staino*, the court considered a telephone "tap" which led to the arrest and prosecution of two individuals dealing in counterfeit currency. The telephone tap was authorized by the district judge after review of an FBI affidavit. The affidavit clearly established government knowledge of defendants' role as conduits for the bogus currency. Defendants ultimately sought to suppress all wiretap evidence, alleging that the affidavits set forth sufficient facts which could have led to their conviction. The district court rejected this argument.

Defendants argue that according to statements in the affidavit, sufficient evidence existed prior to the wiretap to convict [them] both... if that existence was shown to be true. But, although it is likely that probable cause existed for these arrests, it cannot be supposed that there was the faintest reason to think that the trail ended there. By its very nature, the illegal possession of and dealing in counterfeit notes involves, in most instances, many individuals who would be liable as co-conspirators. And even though the investigative agents were able to uncover the first layer of the operation, a substantial likelihood existed that other persons were involved in the same enterprise. Plainly, normal investigative techniques had ceased to be effective once the visible members of the hierarchy, if one existed, were discovered. To suppose that the investigation should have terminated at this point is unrealistic. The men were merely the tip of the iceberg; they could always be replaced. In order to root out the offense, those who were ultimately responsible — individuals who were the source of the counterfeit notes and who placed them into circulation — had to be found,

Id. at 857. Here, it was vital for the government to uncover the source of the "lay off" bets themselves, professional bookmakers who "fueled" the operation and who would simply find replacements once the four principals were sept away.

Defendants attempt to distinguish *Staino* by arguing that the four principals could have lead FBI agents to other participants. In particular, they point to a list of names kept by Genco and apparently known to police. They suggest that normal search and seizure or infiltration would have produced the list, which in turn would have revealed the names of all co-conspirators. This issue is directly addressed in the affidavits and the averments made therein are uncontradicted by any facts of record. The government, not unreasonably, concluded that searches in this type of case are unproductive because gambling records are habitually hidden, destroyed in police raids, or written in special code. Infiltration was also rejected as impractical. The government asserted that it sought information concerning the highest levels of the conspiracy; infiltration would be possible only with regard to the lowest levels and would be ineffective to uncover the full scope and extent of the operation. Similar declarations were accepted by this court in dealing with another "lay off" business. *United States v. Bobo*, 477 F.2d 974, 983 (4 Cir. 1973), *cert. denied sub nom.*, *Gray v. United States*, 421 U.S. 909 (1975). In *Bobo*, we concluded that statements of the kind set forth in the government's affidavits, untainted by any showing of inaccuracy or exaggeration, were sufficient to establish that searches and infiltration (among the many techniques considered) were poor substitutes for electronic surveillance.

Finally, defendants contend that the affidavits are deficient in failing to discuss and eliminate *all* possible alternatives to wiretapping. Defendants specifically note that Agent Huntley fails to mention physical surveillance and observation of the four known principals. We reject this argument.

A. 12

Section 2518(1)(c) offers two alternatives to the government. It may show that traditional investigative techniques have been tried and have failed, or it may show that they are unlikely to succeed. In cases construing the first alternative, the courts have made it clear that police need not exhaust every conceivable technique before making application for a wiretap. *See, e.g., United States v. Feldman*, 535 F.2d 1175, 1178-79 (9 Cir.), *cert. denied*, 45 U.S.L.W. 3345 (U.S. November 8, 1976) (No. 76-113); *United States v. Vento*, 533 F.2d 838, 849 & nn. 15-16 (3 Cir. 1976); *United States v. Robertson*, 504 F.2d 289, 293 (5 Cir. 1974), *rehearing denied*, 506 F.2d 1056, *cert. denied*, 421 U.S. 913 (1975). We think the same logic is applicable to the second alternative; and when applied, we think that the affidavit is sufficient to demonstrate a need for the wiretap.

B.

Defendants next contend that the government violated the wiretap statute by monitoring *all* conversations at London's office whenever any of the three partners were present. Defendants argue that such wholesale monitoring violates the "minimization" requirement contained in the statute. We find this contention to be without merit.

The statute mandates that law enforcement personnel refrain from intercepting communications having little or no relation to the suspected offense:

Every order [authorizing a wiretap] . . . shall be executed as soon as practicable, [and] shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, . . .

18 U.S.C. §2518(5). This provision is intended "[t]o prevent improper invasion of the right of privacy and to curtail the indiscriminate seizure of communications, . . ." *United States*

v. Focarile, 340 F.S. 1033, 1044 (D. Md.), *aff'd sub nom.*, United States v. Giordano, 469 F.2d 522 (4 Cir. 1972), *aff'd*, 416 U.S. 505 (1974).³ We believe that the requirement has been met in the instant case.

³ The minimization requirement, along with the rest of Title III, was drafted in response to Supreme Court decision in *Berger v. New York*, 388 U.S. 41 (1967) and *Katz v. United States*, 389 U.S. 347 (1967). [1968] U.S. Code, Cong. & Ad. News, 2112, 2153, 2163.

In *Berger*, the Supreme Court invalidated a New York eavesdropping statute as unconstitutional under the Fourth and Fourteenth Amendments. Among the statute's infirmities, the Court noted a complete failure to prevent indiscriminate wiretapping. [The New York statute] authorizes the "indiscriminate use" of electronic devices specifically condemned in *Osborn [v. United States]*, 385 U.S. 323 (1966)]. "The proceeding by search warrant is a drastic one," *Sgro v. United States*, 287 U.S. 206, 210, 77 L ed. 260, 262, 53 S. Ct. 138, 85 ALR 108 (1932), and must be carefully circumscribed so as to prevent unauthorized invasions of "the sanctity of a man's home and the privacies of life." *Boyd v. United States*, supra, 116 US 616 at 630, 29 L ed 746, at 751, 6 S Ct 524. New York's broadside authorization rather than being "carefully circumscribed" so as to prevent unauthorized invasions of privacy actually permits general searches by electronic devices, . . .

388 U.S. at 58. Minimization and its companion safeguards were designed to assure that

the order [authorizing a wiretap] will link up specific person, specific offense, and specific place. Together [the provisions of Title III] are intended to meet the test of the Constitution that electronic surveillance techniques be used only under the most precise and discriminate circumstances, which fully comply with the requirement of particularity.

S Rep No. 1097, 90th Cong., 2d Sess., 102 (1968).

Bynum v. United States, cert. denied, 423 U.S. 952 (1975) (Brennan, J., dissenting.)

The wiretap statute does not require that all innocent communications be left untouched. Congress recognized that legitimate investigations would often uncover harmless conduct within the midst of its unlawful counterpart. Accordingly, the wiretap statute merely provides that unnecessary intrusions be minimized, or reduced to the smallest degree possible. In testing compliance with this requirement, the courts have proceeded on a case-by-case basis, invoking a standard of reasonableness. See [1968] U.S. Code, Cong. & Ad. News, 2112, 2192; *United States v. Daly*, 535 F.2d 434, 441 (8 Cir. 1976); *United States v. Armocida*, 515 F.2d 29, 42 (3 Cir.), *cert. denied*, 423 U.S. 858 (1975); *United States v. Quintana*, 508 F.2d 867, 873-74 (7 Cir. 1975); *United States v. James*, 494 F.2d 1007, 1018 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974). The statute is deemed to be satisfied if "on the whole the agents have shown a high regard for the right of privacy and have done all they reasonably could to avoid unnecessary intrusion." *United States v. Armocida*, 515 F.2d 29, 42 (3 Cir.), *cert. denied*, 423 U.S. 858 (1975), quoting from *United States v. Tortorello*, 480 F.2d 764, (2 Cir.), *cert. denied*, 414 U.S. 866 (1973) (emphasis in the original).

In analyzing a given case, the federal courts have considered three principal factors: (1) the nature and scope of the alleged criminal enterprise; (2) the government's reasonable expectation as to the content of, and parties to, the conversations; and (3) the degree of judicial supervision while the wiretap order is being executed. See *United States v. Daly*, 535 F.2d 434, 441-42 (8 Cir. 1976); *United States v. Vento*, 533 F.2d 838, 852-53 (3 Cir. 1976); *United States v. Scott*, 516 F.2d 751, 758-59 (D.C. Cir.), *rehearing denied*, 522 F.2d 1333 (1975), *cert. denied*, 425 U.S. 917 (1976); *United States v. Armocida*, 515 F.2d 29, 44-45 (3 Cir.), *cert. denied*, 423 U.S. 858 (1975); *United States v. Quintana*, 508 F.2d 867, 874-75 (7 Cir. 1975). When we consider each factor, we cannot conclude that the government's conduct violated the statute.

When law enforcement officials are confronted with large, far-flung and on-going criminal activity involving multiple parties, they are afforded greater latitude in conducting wiretaps. The Seventh Circuit, in considering a drug conspiracy, held that

[l]arge and sophisticated narcotics conspiracies may justify considerably more interception than would a single criminal episode. This is especially so where, as here, the judicially approved purpose of the wiretap is not so much to incriminate the known person whose phone is tapped as to learn the identity of far-flung conspirators and to delineate the contours of the conspiracy.

United States v. Quintana, 508 F.2d 867, 874 (7 Cir. 1975). In fact, the legitimate investigation of conspiracies may necessitate the interception of all or almost all communications over a given period of time. See United States v. Chavez, 533 F.2d 491, 493-94 (9 Cir.), *cert. denied*, 44 U.S.L.W. 3685 (U.S. June 1, 1976) (No. 75-6685); United States v. Manfredi, 488 F.2d 588, 600 (2 Cir. 1973), *cert. denied*, 417 U.S. 936 (1974); United States v. Bynum, 485 F.2d 490, 500-02 (2 Cir. 1973), *vacated on other grounds*, 417 U.S. 903 (1974), *on remand*, 386 F.S. 449 (S.D. N.Y. 1974), *aff'd*, 513 F.2d 533 (2 Cir.), *cert. denied*, 423 U.S. 952 (1975); United States v. Cox, 462 F.2d 1293, 1300-01 (8 Cir. 1972), *cert. denied*, 417 U.S. 918, *rehearing denied*, 419 U.S. 885 (1974).

Although defendants were charged with the substantive crime of illegal gambling rather than a narcotics or other type of conspiracy, the reasoning advanced in *Quintana* applies with equal force. The government's proof established a far-flung, continuous, criminal operation involving many persons, known and unknown. The purpose of the wiretap was not to ensnare the known principals. The government was primarily (and justifiably) interested in detecting the hidden

members of the "lay off" operation — those who supported it and who could be expected to support another if only the principals were successfully prosecuted. As such, continual monitoring over a three week period did not offend the statute.

By analyzing the government's expectations, courts attempt to determine whether sufficient advance knowledge was available to tailor the minimization efforts. Did the government know the identities of all suspects? Were police familiar with the timing or patterns of certain conversation, so as to distinguish between innocent and incriminating speech? See *United States v. James*, 494 F.2d 1007, 1020 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974). In the instant case, FBI personnel did not know the identities of all participants in the "lay off" system. Therefore the monitoring agents could not assume that certain conversations with certain individuals would clearly be irrelevant. Additionally, the government chose to utilize electronic eavesdropping rather than a telephone tap. Telephone taps enable police to divide communications into discrete units, which can then be assessed on an individual basis. If a call is personal in nature, interception may cease, subject to resumption when another call is initiated.⁴ Electronic eavesdropping does not allow this degree of selectivity. Conversation may range over many subjects, shifting instantaneously and without warning. Because of this uncertainty, we cannot say that anything less than continuous monitoring would suffice.⁵

⁴ In fact, this procedure was utilized in monitoring calls at the Himes residence. As noted, *supra*, agents "spot checked" each call to determine its essential character. All monitoring and recording would cease if the call dealt with personal matters.

⁵ We also note that many of the conversations at London's office were in code. Special codes have continually caused problems for law enforcement personnel, especially when dealing with narcotics conspiracies. See, e.g., *United*

A third and final consideration is the degree of judicial supervision while the wiretap order is being executed. Where the authorizing judge required and reviewed interim reports, courts have been more willing to find a good faith attempt at minimization. See *United States v. Quintana*, 508 F.2d 867, 875 (7 Cir. 1975) and cases cited therein. In the present case, Judge Young required periodic reports at five day intervals. The reports reflected, *inter alia*, the government's efforts at minimization. This type of judicial scrutiny further supports our conclusion that no statutory violation has accrued.

C.

Defendants' third and final contention deals with the use of recording equipment. Defendants argue that the government was required to record all conversations at

Footnote 5 Concluded:

States v. James, 494 F.2d 1007, 1019 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974); *United States v. Bynum*, 485 F.2d 490, 501 (2 Cir. 1973), *vacated on other grounds*, 417 U.S. 903 (1974), *on remand*, 386 F.S. 449 (S.D. N.Y. 1974), *aff'd*, 513 F.2d 533 (2 Cir.), *cert. denied*, 423 U.S. 952 (1975); *United States v. Cox*, 462 F.2d 1293, 1330-01 (8 Cir. 1972), *cert. denied*, 417 U.S. 918, *rehearing denied*, 419 U.S. 885 (1974); *United States v. Sisca*, 361 F.S. 735, 744 (S.D. N.Y. 1973), *aff'd*, 503 F.2d 1337 (2 Cir.), *cert. denied*, 419 U.S. 1008 (1974).

Federal courts have traditionally allowed a greater degree of monitoring when suspects use specialized codes or jargon. See *United States v. Armocida*, 515 F.2d 29, 44 (3 Cir.), *cert. denied*, 423 U.S. 858 (1975); *United States v. James*, 494 F.2d 1007, 1019 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974). *But see* Note, *Minimization of Wire Interception: Presearch Guidelines and Postsearch Remedies*, 26 Stan. L. Rev. 1411, 1419 n. 42 (1974) (suggesting that the use of codes or jargon should not be invoked to justify departure from the minimization requirement).

London's office, rather than a portion dealing with alleged gambling activities. We agree, but we do not believe that in this case reversal of the convictions is warranted.

The wiretap statute provides that:

[t]he contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations.

18 U.S.C. §2518(8)(a). The statute does not contain discretionary language; it is an absolute command. Interceptions "shall" be recorded, if "possible."⁶ As another federal court has noted, "the wiretap statute requires the recordation of intercepted communications by *any* means authorized by the chapter, . . ." *United States v. Buckhanon*, 374 F.S. 611, 615 (D. Minn. 1973) (emphasis in the original).⁷

⁶ S. Rep. 90-1097; [1968] U.S. Code, Cong. & Ad. News 2112, 2193 states that §2518(8)(a) requires recording if "practicable." See text *infra*.

⁷ In *Buckhanon*, defendants, charged with possession of heroin with intent to distribute and with conspiracy to possess and distribute heroin moved to suppress certain evidence procured by electronic surveillance. One of the arguments concerned recordation of the communications intercepted. Defendants complained that the judicial order, authorizing the wiretaps, did not provide for recordation. The district court countered by noting that recordation was required under the statute and not by virtue of court order.

Here, the government has made no attempt to justify its failure. It has not demonstrated that recordation was impossible. We turn then to consideration of whether this omission required the suppression of all wiretap evidence and consequent reversal of the convictions. We hold that it does not.

The statute expressly prohibits the use at trial, and at certain other proceedings, of the contents of any intercepted wire communication or evidence derived therefrom "if the disclosure of that information would be in violation of this chapter." 18 U.S.C. §2515. The circumstances which require suppression under §2515 are, in turn, set out in §2518 (10)(a):

- (i) the communication was unlawfully intercepted;
- (ii) the order of authorization or approval under which it was intercepted is insufficient on its face;
- or (iii) the interception was not made in conformity with the order of authorization or approval.

Only the first category is relevant to this case, since there is no contention that the orders were insufficient and it is manifest that the duty to record is imposed by the statute itself and not by judicial order. We must decide whether the communications introduced at trial, constituting the recorded conversations at London's office, were "unlawfully intercepted" because of the failure to record other dialogue between the co-conspirators.

Resolution of that issue depends upon three Supreme Court decisions: *United States v. Donovan*, 45 U.S.L.W. 4115 (U.S. January 18, 1977); *United States v. Chavez*, 416 U.S. 562 (1974); and *United States v. Giordano*, 416 U.S. 505 (1974). These decisions hold that "[not] every failure to comply fully with any requirement provided in Title III would render the interception of wire or oral communications

'unlawful.' " United States v. Chavez, 416 U.S. 562, 574-75 (1974). Rather, suppression is required only for a "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." United States v. Giordano, 416 U.S. at 527. In other words, the violation must substantially impinge upon Fourth Amendment values sought to be protected by Congress in restricting and rendering uniform the use of wiretaps.

The recording provision, contained in §2518(8)(a), was enacted to serve an evidentiary function. Congress apparently realized that testimony by monitoring agents of what they heard would be open to attack on grounds of hearsay, failure of recollection and bias. Tape recordings, on the other hand, would be the best evidence and would be almost irrefutable if their authenticity and physical integrity were guaranteed. Accordingly, intercepted communications were to be recorded, if at all possible, and introduced in their recorded form.

The legislative history of §2518(8)(a), though sparse, supports this view of the statute.

Paragraph (8) [of §2518] sets out safeguards to insure that accurate records will be kept of intercepted communications.

Subparagraph (a) requires, if practicable, that the communication be recorded on tape wire or other comparable device. The recording must be made in such a way as will protect it insofar as possible from editing or alteration. Appropriate procedures should be developed to safeguard the identity, physical integrity, and contents of the recordings to insure their admissibility in evidence.

[1968] U.S. Code, Cong. & Ad. News 2112, 2193. In *United States v. Daly*, 535 F.2d 434, 442 (8 Cir. 1976), the Eighth Circuit has indicated that its view of the purpose of the statute is to ensure the admissibility of intercepted communications at trial.

In sum, we do not think that the recording provision was intended to limit the use of wiretapping so as to preserve rights of privacy. Recordation is required to insure that the product of surveillance will be received under traditional rules of evidence. There is no indication that §2518(8)(a) was intended to or could fulfill the same function as exhaustion of investigatory procedures, judicial authorization and review, and minimization in protecting an individual's right to privacy.⁸ It follows that a failure to record, though admittedly a violation of the statute, does not lead to suppression and reversal of the convictions. This result is dictated by the decisions in *Donovan*, *Chavez* and *Giordano*.

⁸In a proper case, we can visualize that, aside from protection of rights of privacy, complete recording could benefit an accused, as for example where an accused asserts that a recording of an incriminating statement was offered in evidence out of context so as to magnify its incriminating effect by omitting related mitigating statements. But, in the instant case, defendants do not allege or demonstrate that any of the recorded communications were distorted or taken out of context. While recordings might be useful also to buttress a claim that minimization was not followed, such an argument is unavailing here. Because of (1) the conspiratorial nature of the offense charged; (2) the inability of monitoring agents to predict the nature of the conversations intercepted; and (3) the degree of judicial supervision involved, we have held that *continual* surveillance of London's office was proper. The same reasoning applies to wiretapping efforts at the Himes' residence, the only other use of electronic surveillance before us.

IV.

London, Jones and Cottman make an additional contention regarding the jury instructions given by the district court. We think that the charge, read as a whole, was unexceptionable and the contention warrants no extended discussion on our parts.

A F F I R M E D.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES OF AMERICA FOR AN ORDER
AUTHORIZING THE INSTALLATION OF A DEVICE
TO REGISTER TELEPHONE NUMBERS CALLED
FROM THE TELEPHONE NUMBER 301/679-6473**

AFFIDAVIT

John D. Huntley, Jr., Special Agent, Federal Bureau of Investigation, Baltimore, Maryland, being duly sworn states:

1. I am an "investigative or law enforcement officer... of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code - that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. Your affiant seeks an order authorizing the use of a device to register telephone numbers called from telephone number (301) 679-6473 concerning offenses involving violations of Section 1955 of Title 18, United States Code, and a conspiracy to violate this statute which have been and are being committed by Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson, and others known and unknown.

3. I have participated in the investigation of these offenses committed by those persons named above and as a result of my present participation in this investigation and of reports made to me by Agents under my direction, I am familiar with all circumstances of the offense. On the basis of that familiarity, I allege the facts contained in the paragraphs below to show that:

(a) There is probable cause to believe that Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson, and others as yet unknown, have been and are now presently engaged in an illegal gambling business which makes use of communication facilities for the purpose of conducting this illegal gambling business and which involves five or more persons and has a gross revenue of \$2,000 or more in any single day and has been and remains in substantially continuous operation for a period in excess of 30 days. Through investigation conducted by myself and other Special Agents of the Baltimore Federal Bureau of Investigation Office, I believe that this illegal gambling business operates in the following manner:

Robert "Fifi" London, Albert Carmen Isella and Richard "Dick" Genco are in partnership in the "lay-off" part of an extensive illegal gambling business. This "lay-off" partnership specializes in purchasing heavily bet numbers or other wagers from the lower level numbers operators and is necessary for these backers to insure that if there were a "hit" on a heavily bet number, they would not lose a great deal of money. From my experience, I know that the "lay-off" usually occurs between 2:00 p.m. and 4:00 p.m. and is accomplished prior to the first digit of the winning number being determined. Information set forth indicates that Robert Leroy Himes and Susan Himes are handling the lay-off office for London, Isella and Genco and that they

will make daily calls except on Sunday to the backers to determine which numbers they choose to lay-off. Information set forth below also shows probable cause that Melvin Eugene Brzostek, Robert John Thibou, Orva Elerson "Lucky" Robinson, and Ambrose Robinson and other backers as yet unknown, are the backers of large scale illegal numbers lotteries from whom London will take lay-off wagers. This illegal gambling business is conducted in violation of the Annotated Code of Maryland, Article 27, Section 240 (Bookmaking) and Section 356 (Lottery) and is thereby in violation of Sections 1955 and 371 of Title 18, United States Code.

(b) There is probable cause for belief that evidence of these offenses will be obtained through the installation of a device to register telephone numbers called from the telephone number 301-679-6473 said registration being herein applied for.

(c) There is probable cause to believe that the telephone number 301-679-6473 subscribed to in the name of Susan M. Price, 1028 Erwin Drive, Joppa, Maryland, has been and is being and will be used for carrying out the offenses set out in paragraph 3 (a) above, all of which appears more fully hereafter.

INFORMANT RELIABILITY

Informant number one has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately four years, said information relating to gambling activity in the Baltimore area. All of the information furnished by informant number one has been corroborated by independent investigation and has always proven to be accurate. Information from this informant has resulted in the arrest and conviction of approximately 25 individuals on Federal gambling charges in the past two years.

Informant number two has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland, area. All of the information furnished by informant number two has been corroborated by independent investigation by the Baltimore Office of the Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. This informant has been associated with members of the gambling community in Baltimore for over 10 years and has been involved in wagering activities for a like period of time.

Informant number three has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately two years, said information relating to gambling activity in the Baltimore, Maryland area. All of the information furnished by informant number three has been corroborated by dependent investigation by the Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. Information from this informant has resulted in the arrest and conviction of at least six individuals on Federal gambling charges in the past year. Also, information furnished by this informant and subsequently turned over to the Baltimore City Police Department has resulted in the arrest and conviction of approximately eight individuals on various State violations during the past year.

Informant number four has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately 10 years. This information has related to gambling activity in the Baltimore area. This source has associated with members of the Baltimore gambling community for a number of years and has directly engaged in wagering activities. Information from this informant has resulted in the arrest and conviction of a major gambling figure on Federal gambling charges. All of the information

furnished by informant number four has been corroborated by independent investigation conducted by the Federal Bureau of Investigation and local authorities and has always proven to be accurate.

Informant number five has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland, area. All of the information furnished by informant number five has been corroborated by independent investigation by the Federal Bureau of Investigation and that information has always proven to be accurate. This informant has been involved in wagering activities in the Baltimore area for more than nine years and is personally acquainted with many of the Baltimore gambling figures. Information furnished by this informant has led to the arrest of eight individuals on Federal gambling charges and the conviction of one individual on Federal gambling charges. The remaining seven are awaiting trial.

FACTS AND CIRCUMSTANCES**A. GENERAL DESCRIPTION OF THE GAMBLING BUSINESS**

On May 25, 1974, informant number one advised Special Agent David E. Faulkner of the Baltimore, Maryland Field Office of the Federal Bureau of Investigation, who advised your affiant that as of May 25, 1974, Robert "Fifi" London¹, Richard "Dick" Genco² and Albert

¹ On June 20, 1974, a review was caused to be made of the records of the Baltimore City Police Department by Special Clerk Patrick W. Marshall, Baltimore Office of the Federal Bureau of Investigation who advised your affiant that these records indicated that Robert "Fifi" London was arrested on November 14, 1969, on charges of lottery, conspiracy to violate lottery laws and violation of lottery laws. No disposition was available.

On July 18, 1974, Paul R. Kramer, Deputy United States Attorney, Baltimore, Maryland, advised that in May, 1967, Robert "Fifi" London was arrested for violation of the wagering tax laws. The case was later dismissed because of changes in the wagering tax laws. London was charged and convicted in the District of Maryland for income tax evasion and on February 4, 1972, London was sentenced to serve 30 months' incarceration and fined \$20,000.

² On June 26, 1974, your affiant reviewed Federal Bureau of Investigation Identification Record number 388 141 C for Richard Genco which indicated he was arrested by the Baltimore City Police Department in 1956 and charged with five counts of armed robbery. He was subsequently found guilty and sentenced to 12 years in the Maryland States Reformatory For Men. In 1971 Genco was indicted by a federal grand jury in the District of Maryland and charged with violation of 18 U.S.C. §1955. This case was dismissed by the Government in 1973.

Isella³ are in partnership in the major numbers layoff operation for the Baltimore area. Informant number one advised that London has a 75 percent interest in this operation while Genco and Isella share a 25 percent interest. Informant number one learned of this through his direct contact with Albert Isella.

Informant number one advised your affiant on June 24, 1974, that as of that date that Isella makes at least one "lay-off" call daily between 3:00 and 3:30 p.m. Isella makes this call to a numbers backer who lays-off to Isella. Informant number one also stated that the backers of the illegal numbers operation settle up with the lay-off people

³ On June 25, 1974, your affiant reviewed the Federal Bureau of Investigation Identification Record for Albert Isella under FBI record number 398 594 E. This record indicated that Isella had been arrested on six different occasions on gambling or gambling related charges in the Baltimore area. Of these arrests, he was sentenced to one year at the Maryland House of Correction, sentence suspended, to pay \$1,000 and costs.

Special Agents Don L. Hubbard and Robert H. Twigg advised your affiant on June 25, 1974, that they were conducting a surveillance of Albert Isella on March 27, 1974, at which time they observed him throw certain papers out of his car on Philadelphia Road at approximately 9:54 a.m. Special Agent John F. Donahue advised your affiant that he had recovered these papers in the middle of the road directly in front of 8413 Philadelphia Road, Baltimore, and that these same papers had been submitted to the FBI Laboratory for analysis. The FBI Laboratory indicated that the submitted material was of the type found in and associated with the numbers operation handling wagers of three digit numbers. These items were of the type possessed by one in the supervisory level of the operation as opposed to a mere bettor. They also found that several of the wagers were in even amounts which suggested the possibility that these were layoff wagers.

between Monday and Wednesday of each week for the previous week's work. Some of the backers appear personally at London's office, in the basement of 1202 N. Charles Street for the purpose of discussing the financial status of their accounts. Informant number one obtained this information from those involved in this operation. Informant number one advised that on Wednesday morning, May 22, 1974, Richard Genco was observed by him in Robert London's office in the basement of 1202 North Charles Street and that he had learned through others involved in the illegal gambling business that Genco and London had conversation in the office regarding setting up the previous week's "lay-off". Informant number one advised that Albert Isella advised him that he personally goes to London's office on Charles Street in the mornings at the first of the week to discuss with London matters that arise in relation to the "lay-off".

Special Agent Thomas A. Kelley advised your affiant that on June 17, 1974, he had maintained a surveillance in the vicinity of 1202 North Charles Street beginning at 9:30 a.m. At approximately 9:44 a.m., Special Agent Kelley observed Robert London come out of 1202 N. Charles Street and place money in a parking meter where a white Lincoln Continental, Virginia license DSG 857 was parked. London then re-entered 1202 N. Charles Street. At approximately 10:26 a.m., Special Agent Kelley observed Albert Isella entering 1202 N. Charles Street. Isella exited this location at approximately 10:42 a.m.

Special Agent Don L. Hubbard advised your affiant that on July 1, 1974, during the course of a surveillance at 1202 N. Charles Street, he observed Albert Isella park a blue over white Chevrolet, Maryland license HH 4962 at 1202 N. Charles Street. This occurred at approximately 10:43 a.m. On this same date, your affiant observed Isella entering 1202 N. Charles Street at approximately 10:44 a.m.

On July 17, 1974, informant number one advised your affiant that on July 13, 1974, the lay-off operation headed by London, Isella and Genco had incurred a substantial loss as a result of heavy wagering on the number "121" which was the winning number for the day.

Informant number one further advised that he learned from a backer who lays off to London's operation that on Monday, July 15, 1974, certain numbers backers appeared personally at London's office in the basement of 1202 North Charles Street, Baltimore, Maryland, and collected money directly from London to cover winning wagers on the number 121. Albert Isella also went to London's office at 1202 North Charles Street, Baltimore, Maryland, on the morning of July 15, 1974, in order to obtain cash from London to pay other backers who do not have access to London directly. This source advised that London keeps a tally slip on his person and when one of the backers appears to settle up London takes the backer into his office in the basement of 1202 North Charles Street to discuss the lay-off.

Informant number two advised your affiant on May 7, 1974, that Richard Genco and Robert "Fifi" London are conducting the major gambling "lay-off" operation for the Baltimore area. Informant number two has learned of this through conversations with Richard Genco and London regarding the "lay-off" business. Informant number two advised that as of this date an unknown male will call the individual numbers backers on a daily basis between the hours of 1:00 and 3:30 p.m. in order to accept lay-off bets. Informant number two stated that Genco will settle up with certain individual backers on Monday, Tuesday and Wednesday evenings for the previous week's lay-off bets. The settling up involves an exchange of money only and the backer is generally advised in advance what he owes or what is owed to him for the previous week's work. Informant number two further advised on May 23, 1974, that he has

observed that Genco keeps a list of numbers accounts in his car in the event the backers question what is owed. Informant number two also advised that from his personal observations this list contained code names for at least one dozen numbers backers and the total tally for the previous week's lay-off for that particular list was approximately \$20,000.

Informant number two advised on June 3, 1974, that he had learned through conversations with Melvin Eugene Brzostek⁴ which occurred during May, 1974, that Brzostek is the backer of a large numbers operation handling approximately twelve writers. Informant number two advised that he had learned from Richard Genco during the same period that Brzostek is laying off to Genco.

Informant number two further stated that he knew through personal contact with Genco that Genco would contact London in order to change the track from which the winning number for the day would be determined for the Baltimore area. Informant number two advised that it is the custom in the gambling community in Baltimore for this type of change to be made by the principal figure in the "lay-off" business. Informant number two also advised that he has learned through conversations during the last month with numbers backers who lay-off to Albert Isella that Isella is also a partner in the lay-off operation with London and Genco.

⁴ On June 26, 1974, your affiant reviewed FBI record number 827 215 G which indicated that Melvin Eugene Brzostek was arrested once by the Baltimore City Police Department in 1968 for lottery charges. No disposition on this charge was available. The same record indicated that Brzostek was arrested in 1972 on federal gambling charges. A further review of these records indicated that Brzostek subsequently pleaded guilty to the federal gambling charges.

Informant number two advised your affiant on June 11, 1974, that during the last week in May, 1974, the incoming calls to the backers from the lay-off office had been made by a female caller between the hours of 1:00 and 3:30 p.m. Informant number two advised that after this week the calls continued to be made by the male caller as before. Informant number two further stated he had learned from one of the principals of this operation that the reason that the woman had been calling during the last week in May was because her husband, who usually handled the lay-off office, had been out of town during that week and she had been entrusted with handling the lay-off calls.

Informant number three advised your affiant on June 11, 1974 that he had learned through conversations with Orva Elerson "Lucky" Robinson during the past week that Robinson's numbers operation, which he estimated to be in excess of \$16,000 a week, was laying off to Robert "Fifi" London. This source further advised that he had learned through individuals involved in Robinson's numbers operation that "Lucky" Robinson's brother, Ambrose Robinson, is also presently involved as a backer in an illegal numbers lottery and is possibly connected with his brother "Lucky's" operation.⁵

⁵ On June 26, 1974, your affiant reviewed FBI record number 380 863 E for Orva Elerson Robinson which indicated that he had five prior arrests. No dispositions were available on this record.

Special Agent Kevin Foley advised your affiant on July 8, 1974, that he, along with another Special Agent of the Baltimore FBI Office, interviewed Orva Elerson Robinson regarding the alleged federal violation by Robinson. During the course of this interview, Robinson stated that Ambrose Wilson Robinson was his brother.

On June 26, 1974, Special Agent Byron E. Foy advised your affiant that on the same date he checked the arrest

Special Agent John C. Bonner advised your affiant that on June 20, 1974, informant number four had advised him that Ambrose Robinson was currently the backer in a major numbers lottery which lays-off between \$10,000 and \$12,000 a week to Robert "Fifi" London. This source learned of this information through conversations with one of the principals. Informant number four advised that he had learned that on June 19, 1974, the number 210 had been the winning number and that certain backers who had laid this number off to "Fifi" had gone directly to London's office at 1202 N. Charles Street to collect the money in order to pay-off the winners.

Special Agent Philip G. Cabaud, Jr., advised your affiant that on June 19, 1974, he had maintained a physical surveillance in the vicinity of 1202 N. Charles Street. Special Agent Cabaud advised that during the course of this surveillance he had observed Robert "Fifi" London at approximately 10:41 a.m. exit 1202 North Charles Street

⁵ (con'd)
record of Ambrose Wilson Robinson, date of birth April 28, 1915, at Central Records, Baltimore City Police Department, Baltimore, Maryland, which revealed that Ambrose Wilson Robinson, FBI Number 828 629 E, has an FBI record indicating three arrests for gambling related violations, and one arrest for bribery, all by the Baltimore City Police Department. Robinson pleaded guilty and was fined \$250.00 plus court costs for a gambling arrest dating back to October 19, 1957.

Baltimore City Police Department records further revealed that on Ambrose Robinson's most recent arrest for bribery that he pleaded guilty to attempting to bribe Sgt. Howard Peacock, Baltimore City Police Department, to influence him in the performance of his official duty in a gambling related case entitled the State of Maryland vs Alfred Robinson and Bernice Voss. Ambrose Robinson received an eight year suspended sentence plus a \$5,000 fine plus court costs.

and then re-enter this location at approximately 10:45 a.m. At approximately 11:27 a.m. a stocky built Negro male was observed entering 1202 N. Charles Street and at approximately 12:05 p.m. this same Negro male was observed exiting 1202 N. Charles Street.

Special Agent William J. C. Agnew, Jr., advised your affiant that on this date he had observed the aforementioned Negro male coming from the vicinity of 1202 N. Charles Street at approximately 12:05 p.m. and entering a late model Cadillac bearing Maryland license GH 4752⁶ and driving from the area.

Informant number five advised Special Agent David E. Faulkner on May 31, 1974, who advised your affiant that Robert John Thibou⁷ is presently backing a large scale

⁶ On June 24, 1974, your affiant caused a check to be made of the records of the Maryland Motor Vehicle Administration through the Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license GH 4752 is for a 1971 four-door Cadillac registered to Ambrose Wilson Robinson, 410 Ivy Church Road, Baltimore, Maryland.

On June 26, 1974, Special Agent Philip G. Cabaud, Jr. advised your affiant after viewing a Baltimore City Police Department photograph dated June 13, 1972, of Ambrose W. Robinson that this photograph was identical to the individual entering at 11:27 a.m. and exiting at 12:05 p.m. from 1202 N. Charles Street on June 19, 1974.

⁷ On June 20, 1974, Special Clerk Patrick W. Marshall, Baltimore Federal Bureau of Investigation, caused a review to be made of the records of the Baltimore City Police Department which indicated that Robert John Thibou had been arrested on six different occasions by the Baltimore City Police Department on various charges. In 1963 he was charged with maintaining a house for gambling and fined \$1,000 plus costs. Also he was charged with operating and maintaining a gambling device and fined \$500 plus costs. On three subsequent occasions involving gambling charges he was either found not guilty or no disposition was available.

numbers operation handling between \$80,000 and \$90,000 in weekly wagers. Informant number five advised that Thibou is either a partner of Robert "Fifi" London or lays off to London.

B. INFORMATION CONCERNING USE OF TELEPHONE NUMBER (301) 679-6473 BY THE GAMBLING BUSINESS

Informant number five advised that Bobby Himes⁸ is presently making the lay-off calls for London. Informant number five has learned this through conversations with a principal in this lay-off operation. This principal in the operation indicated to informant number five that London's lay-off business will total between \$70,000 and \$90,000 weekly in lay-off bets. Informant number five advised that Himes handles the lay-off work from a telephone in his home in the Pasadena, Maryland, area, and is paid approximately \$300 a week for this.

Informant number five advised Special Agent Jerry W. Bastin on June 5, 1974, who advised your affiant that Himes is presently making the lay-off calls from his home in the Pasadena area. Informant number five advised that there were two telephones at this location and the telephone which was not being used for handling the lay-off was

⁸ On June 20, 1974, the records of the Baltimore City Police Department were caused to be reviewed by Special Clerk Patrick W. Marshall. These records indicated that Robert Leroy Himes, 2803 Indiana Avenue, had been arrested on approximately 20 occasions by the Baltimore City Police Department and has been found guilty on five different occasions on charges of larceny, assault, false pretense, drunk on a public street and resisting arrest.

A. 37

telephone number 301-255-1328.⁹ Informant number five states that Himes made use of the second telephone at this location to make the outgoing lay-off calls and when he was out of town his wife, Susan, would handle the lay-off calls.

Informant number five advised Special Agent Jerry W. Bastin on June 17, 1974, who advised your affiant that Himes had been out of town during most of the last week of May, 1974, and that during this period his wife handled the lay-off calls in his absence.¹⁰

On June 11, 1974, your affiant observed a 1969 green Pontiac bearing Maryland license PS 8690¹¹ and driven by Robert Leroy Himes park in front of 1476 Park Lane, Pasadena, Maryland, at approximately 11:44 p.m. This vehicle remained at that location during the course of the surveillance which terminated at 3:30 p.m. on the same date.

⁹ On June 24, 1974, your affiant caused a review to be made of the records of the Chesapeake and Potomac (C&P) Telephone Company which indicated that telephone number 301-255-1328 is a non-published telephone installed on February 5, 1974, in the name of Mrs. Susan M. Price and located at 1476 Park Lane. These records also indicated that telephone number 301-255-1320 is an auxiliary service in the name of the above named individual at the same location.

¹⁰ See information furnished by informant number two on page 11 of this affidavit.

¹¹ On June 24, 1974, your affiant caused a check to be made of the records of the Maryland Motor Vehicle Administration through the Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license PS 8690 is for a 1969 Pontiac, two-door, registered to Susan May Himes, 1476 Park Lane, Pasadena, Maryland.

On June 12, 1974, your affiant observed the above-described Pontiac parked at 1476 Park Lane, Pasadena, Maryland, at 10:15 a.m. This vehicle remained at that location until 3:55 p.m. at which time Robert Himes, an unknown white female, and a child exited 1476 Park Lane and got into this Pontiac with Himes driving. This vehicle proceeded from the area to Maryland Route 100 and then on Maryland Route 2.

On June 17, 1974, Special Agent John F. Donohue advised your affiant that he had initiated a surveillance on this date in the vicinity of 1476 Park Lane, Pasadena, Maryland, at 1:45 p.m. at which time he had observed the above Pontiac parked in front of 1476 Park Lane. This vehicle remained at this location from this time until approximately 5:30 p.m. at which time the surveillance was terminated.

On June 18, 1974, Special Agent John F. Donohue advised your affiant that on this date he had maintained a surveillance from 2:15 p.m. to 5:15 p.m. in the vicinity of 1476 Park Lane, Pasadena, during which time this vehicle remained parked in front of this location.

On June 19, 1974, Special Agents John F. Donohue and Ronald B. Miller advised your affiant that on this date at approximately 2:16 p.m. they observed a 1969 green Pontiac bearing Maryland license PS 8690 driven by a white male who appeared to be identical with Robert Leroy Himes turn off Bodkin Road onto Park Lane in Pasadena, Maryland. At approximately 2:18 p.m. Special Agent John F. Donohue observed this same vehicle parked at 1476 Park Lane between 2:18 and 3:50 p.m. This vehicle remained parked at this location. At 3:56 p.m. Special Agents Ronald B. Miller and John F. Donohue observed this same Pontiac being driven by Robert Leroy Himes proceed from Park Lane to Bodkin Road.

On June 25, 1974, Special Agent John F. Donohue advised your affiant that he had conducted a surveillance in the vicinity of 1476 Park Lane, Pasadena, Maryland, between 3:05 p.m. and 4:07 p.m. during which time this vehicle was observed on several different occasions to be parked in front of this location.

The records of the Chesapeake and Potomac (C&P) Telephone Company, as checked by your affiant on June 26, 1974, indicated that telephone service to 1476 Park Lane, Pasadena, Maryland, was to be discontinued as of June 26, 1974. This service was transferred in the name of Susan Price, 1028 Erwin Drive, Joppa, Maryland, effective June 25, 1974. The numbers utilized on Erwin Drive are a main number of 679-6477 and 679-6473 which is an auxiliary number.

On June 26, 1974, Special Agents Philip G. Cabaud, Jr., and Ronald B. Miller advised your affiant that on this date at 11:45 a.m. they observed Robert Leroy Himes in the doorway at 1028 Erwin Drive, Joppa, Maryland. A 1967 green Pontiac bearing Maryland license PA 5707¹² and a 1969 Pontiac bearing Maryland license PS 8690 were observed parked in the vicinity of this address. At 12:20 p.m. a check was again made at this address and the same vehicles were observed to be parked in the same location at this address. At 1:40 p.m. Robert Leroy Himes was observed to be standing in the front yard at this address.

¹² On February 26, 1974, your affiant caused a check to be made of the records of the Motor Vehicle Administration for the State of Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license PA 5707 is for a 1967 Pontiac two-door, registered to Susan May Himes, 1476 Park Lane, Pasadena, Maryland, and described as a white female, 5'2" tall, 120 pounds, date of birth June 8, 1948.

On June 28, 1974, informant number five advised Special Agent Jerry W. Bastin who advised your affiant that Bob Himes and his wife Susan had moved from his residence in Pasadena, Maryland to Joppa, Maryland. This move had occurred during the last week of June, 1974. Informant number five further advised that he had overheard Himes state that he was still handling the lay-off office for "Fifi" London at his new residence in Joppa, and that London had called him at this location on at least one occasion to take care of matters that related to the "lay-off" business. Himes was overheard to state that he used the same telephone set up in Joppa as he had used in Pasadena and that the phones were in the name of his wife Susan and that they utilized the auxiliary phone to make the daily lay-off calls to the different backers.

Informant number two advised your affiant on July 3, 1974, that he had been told by an individual who was receiving a lay-off call from Robert "Fifi" London's lay-off office that the lay-off call was currently being made by the same individual who had been making the lay-off call in May with the exception of the last week in May when the caller was a female. This source advised that this call continued to be made between 3:00 and 3:30 each day.

Informant number two advised your affiant on July 18, 1974, that as of this date one of the individual backers is continuing to receive the daily incoming telephone call between 1:00 and 3:30 p.m. from the lay-off office maintained by London. The individual taking the lay-off from this backer is the same caller as previously noted. The source knows of this through direct contact with the individual receiving this call.

Special Agents Ronald B. Miller and Philip G. Cabaud, Jr., advised your affiant that on July 1, 1974, they had observed Robert Himes exit a green Pontiac, Maryland license PS 8690 at 1028 Erwin Drive, Joppa, Maryland. This

occurred at approximately 1:50 p.m. This vehicle was observed to still be parked at this location at 3:15 p.m. on this date.

Special Agent Ronald B. Miller advised your affiant that on July 2 and 3, 1974, he had maintained surveillance in the vicinity of 1028 Erwin Drive. On July 2, 1974, between 3:00 and 3:30 p.m., he observed a green Pontiac, Maryland license PA 5707 (previously noted to be registered to Susan Himes) parked at 1028 Erwin Drive. On July 3, 1974, Special Agent Ronald B. Miller observed the two Pontiacs previously noted to be registered to Susan Himes, parked at 1028 Erwin Drive between approximately 12 noon at 2:00 p.m.

Informant number one advised your affiant on July 8, 1974, that for the past two weeks one of the individual backers who had previously been receiving a lay-off call from Albert Isella was now receiving this call from an individual known as Bobby or a woman identified as Bobby's wife. This source also advised that through conversation by a principal in this gambling operation that "Fifi" London was maintaining an office in Joppa, Maryland, for the purpose of calling the offices of numbers backers on a daily basis between the hours of 1:00 and 3:30 p.m. This source further advised that he had learned that this individual in Joppa maintained his records on water soluble paper and that once a day he would either:

- (1) Call these records to London, Isella or Genco.
- (2) See that the records are personally delivered to one of the three named in (1) above.

Section 803 of Title VIII, entitled Syndicated Gambling, or the "Organized Crime Control Act of 1970", Public Law 91-452, 90th Congress, approved October 15, 1971, amended chapter 95, Title 18, United States Code, by

adding a new section, Section 1955, prohibition of illegal gambling businesses. Section 801 of Title VIII of this Act contains special findings that illegal gambling involves widespread use of, and has an effect on, interstate commerce and facilities thereof.

NEED FOR INTERCEPTION

The registration of numbers called by the telephone specified is necessary to the success of the investigation for the following reasons:

1. The confidential informants described herein have categorically refused to testify in open court for fear of their personal safety and that of their families.

2. Normal investigative techniques are unlikely to succeed:

- (a) Without the testimony of the above-mentioned informants it would be exceedingly difficult to prove the complete nature of the current gambling operation of Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson and others as yet unknown.

- (b) It is doubtful that a search warrant, if obtained and executed, would result in obtaining gambling records sufficient to show the complete nature of this gambling operation. From my experience and the experience of other Agents, I know that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the offenses. This is particularly true in regards to evidence relating to the "lay-off" part of a gambling operation. I have found through my experience

and the experience of other Special Agents who have worked on other gambling cases that gamblers frequently do not keep incriminating records. If such records have been maintained, usually gamblers, immediately prior to or during the physical search, destroy these records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish all of the elements of said offenses because such records are difficult to interpret and many times are of no significance without more complete knowledge of the gamblers activities.

(c) There are no known witnesses who could be relied upon to truthfully testify to the violations in question.

(d) Infiltration of the gambling operation by an undercover Agent does not appear to be possible in this case but even if such infiltration were possible, it would only be at the lowest level of the operation which would not result in evidence being obtained regarding involvement of the backers and the lay-off part of the operation. Nor would such infiltration, even if possible, ever be expected to discover the full scope and extent of the operation.

(e) Calling witnesses before the Grand Jury would not result in the gathering of sufficient evidence to uncover the full scope and extent of the operation. Only those individuals integrally involved in the operation at a high level have the requisite knowledge regarding the full scope and extent of the operation. Witnesses, even if immunized, are reluctant to incriminate themselves and their close working associates. Together their testimony would require immunization and non-prosecution of those who are the principals of the operation. But, even if obtained, their testimony is not corroborated.

3. Due to the manner in which the violations are carried out, the interception of these communications is the

only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove the commission of this violation.

4. In view of the information developed, as set forth above, the activity to be electronically covered is believed to be a continuing conspiracy. It is therefore believed that the evidence sought will be obtained on a continuing basis on a number of days following the first receipt of the particular communications which are the object of this request. Therefore, it is requested that these interceptions not terminate when the sought communications are first obtained and that this authority continue for a period of 20 days thereafter.

/s/ JOHN D. HUNTLEY, JR.

Subscribed and sworn to before me this 24th day of July, 1974.

/s/ (illegible)

ANNEX C

AUTOMOBILES TO BE SEARCHED

| <i>Description of Automobile</i> | <i>Magistrate's Docket Number</i> |
|---|-----------------------------------|
| 1. 1974 Buick Station Wagon Maryland License PN 2851 Vehicle Identification Number 4K35J4G143772 | 1-74-3248-M |
| 2. 1974 Imperial, Four-door Sedan Maryland License MW 6742 Vehicle Identification Number YM43T4C137342 | 1-74-3249-M |

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

(Misc No. 94 4)

**IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA FOR
AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE COMMUNICATIONS**

AFFIDAVIT

John D. Huntley, Jr., Special Agent, Federal Bureau of Investigation, Baltimore, Maryland, being duly sworn states:

1. I am an "investigative or law enforcement officer. . . of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code — that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. Your affiant seeks authorization to intercept wire communications to and from telephone number (301) 679-6473 subscribed to by Susan M. Price, 1028 Erwin Drive, Joppa, Maryland, concerning offenses involving violations of Section 1955 of Title 18, United States Code, and a conspiracy to violate this statute which have been and are being committed by Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson, and others known and unknown.

3. I have participated in the investigation of these offenses committed by those persons named above and as a result of my present participation in this investigation and of reports made to me by Agents under my direction, I am familiar with all circumstances of the offense. On the basis of that familiarity, I allege the facts contained in the paragraphs below to show that:

(a) There is probable cause to believe that Robert "Fifi" London, Albert Carmen Isella, Richard Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson, and others known and unknown, have been and are now presently engaged in an illegal gambling business which makes use of communication facilities for the purpose of conducting this illegal gambling business and which involves five or more persons and has a gross revenue of \$2,000 or more in any single day and has been and remains in substantially continuous operation for a period in excess of 30 days. Through investigation conducted by myself and other Special Agents of the Baltimore Federal Bureau of Investigation Office, I believe that this illegal gambling business operates in the following manner:

Robert "Fifi" London, Albert Carmen Isella and Richard "Dick" Genco are in partnership in the "lay-off" part of an extensive illegal gambling business. This "lay-off" partnership specializes in purchasing heavily bet numbers or other wagers from the lower level numbers operators and is necessary for these backers to insure that if there were a "hit" on a heavily bet number, they would not lose a great deal of money. From my experience, I know that the "lay-off" usually occurs between 2:00 p.m. and 4:00 p.m. and is accomplished prior to the first digit of the winning number being determined. Information set forth indicates that Robert Leroy Himes and Susan Mae Himes, also known as Susan Mae Price, are working for London, Isella, and Genco in the illegal gambling business and as a function of this employment they will make daily calls except on Sunday to the backers to determine which numbers are to be laid-off. After determining the winning number for the day from Acme News Service, they will again telephone the backers when necessary to advise them of any winning number wagers which have been "laid-off". Information set forth below also shows probable cause to believe that Melvin Eugene Brzostek, Robert John Thibou, Orva Elerson "Lucky" Robinson and Ambrose Robinson and other backers as yet unknown, are the backers of large scale illegal numbers lotteries

from whom London will take lay-off wagers. I know from my experience and the experience of other Special Agents of the Federal Bureau of Investigation familiar with illegal gambling activities in the Baltimore, Maryland, area, that the settling up of accounts between numbers backers and lay-off operators customarily occurs at least once each week.

This illegal gambling business is conducted in violation of the Annotated Code of Maryland, Article 27, Section 240 (Bookmaking) and Section 356 (Lottery) and is thereby in violation of Sections 1955 and 371 of Title 18, United States Code.

(b) There is probable cause for belief that evidence of these offenses will be obtained through the interception of wire communications, authorization for said interception being herein applied for.

(c) There is probable cause to believe that the telephone subscribed to in the name of Susan M. Price, 1028 Erwin Drive, Joppa, Maryland, has been and is being and will be used for carrying out the offenses set out in paragraph 3(a) above, all of which appears more fully hereafter.

INFORMANT RELIABILITY

Informant number one has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately four years, said information relating to gambling activity in the Baltimore area. All of the information furnished by informant number one has been corroborated by independent investigation and has always proved to be accurate. Information from this informant has resulted in the arrest and conviction of approximately 25 individuals on Federal gambling charges in the past two years.

Informant number two has been furnishing information to the Maryland State Police for approximately three years, said

information relating to illegal gambling activity in the Baltimore, Maryland, area. The Maryland State Police have advised the Federal Bureau of Investigation that the information furnished by this informant has resulted in the arrest and conviction of four individuals for violation of the gambling laws of Maryland and in the recovery of stolen property in other state cases. The information furnished by informant number two has been corroborated by independent investigation by the Maryland State Police and has always proven accurate.

Informant number three has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland, area. All of the information furnished by informant number three has been corroborated by independent investigation by the Baltimore Office of the Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. This informant has been associated with members of the gambling community in Baltimore for over 10 years and has been involved in wagering activities for a like period of time.

Informant number four has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately two years, said information relating to gambling activity in the Baltimore, Maryland, area. All of the information furnished by informant number four has been corroborated by independent investigation by the Federal Bureau of Investigation and the Baltimore City Police Department and has always proven to be accurate. Information from this informant has resulted in the arrest and conviction of at least six individuals on Federal gambling charges in the past year. Also, information furnished by this informant and subsequently turned over to the Baltimore City Police Department has resulted in the arrest and conviction of approximately eight individuals on various state violations during the past year.

Informant number five has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for

approximately 10 years. This information has related to gambling activity in the Baltimore area. This source has associated with members of the Baltimore gambling community for a number of years and has directly engaged in wagering activities. Information from this informant has resulted in the arrest and conviction of a major gambling figure on Federal gambling charges. All of the information furnished by informant number five has been corroborated by independent investigation conducted by the Federal Bureau of Investigation and local authorities and has always proven to be accurate.

Informant number six has been furnishing information to the Federal Bureau of Investigation, Baltimore, Maryland, for approximately one year, said information relating to gambling activity in the Baltimore, Maryland, area. All of the information furnished by informant number six has been corroborated by independent investigation by the Federal Bureau of Investigation and that information has always proven to be accurate. This informant has been involved in wagering activities in the Baltimore area for more than nine years and is personally acquainted with many of the Baltimore gambling figures. Information furnished by this informant has led to the arrest of eight individuals on Federal gambling charges and the conviction of one individual on Federal gambling charges and the conviction of one individual on Federal gambling charges. The remaining seven are awaiting trial.

FACTS AND CIRCUMSTANCES

A. INFORMATION CONCERNING SIZE AND SCOPE OF THE GAMBLING BUSINESS

On May 25, 1974, informant number one advised Special Agent David E. Faulkner of the Baltimore, Maryland, Field Office of the Federal Bureau of Investigation, who advised your

affiant that as of May 25, 1974, Robert "Fifi" London,¹ Richard "Dick" Genco,² and Albert Isella³ are in partnership in the major numbers lay-off operation for the Baltimore area. Informant number one also advised that London has a 75 percent interest. Informant number one learned this information through his direct conversations with Albert Isella during the prior week.

¹ On June 20, 1974, a review was caused to be made of the records of the Baltimore City Police Department by Special Clerk Patrick W. Marshall, Baltimore Office of the Federal Bureau of Investigation who advised your affiant that these records indicated that Robert "Fifi" London was arrested on November 14, 1969, on charges of lottery, conspiracy to violate lottery laws and violation of lottery laws. No disposition was available.

On July 18, 1974, Paul R. Kramer, Deputy United States Attorney, Baltimore, Maryland, advised that in May, 1967, Robert "Fifi" London was arrested for violation of the wagering tax laws. The case was later dismissed because of changes in the wagering tax laws. London was charged and convicted in the District of Maryland for income tax evasion and on February 4, 1972, London was sentenced to serve 30 months incarceration and fined \$20,000.

² On June 26, 1974, your affiant reviewed Federal Bureau of Investigation Identification Record number 388 141 C-for Richard Genco which indicated he was arrested by the Baltimore City Police Department in 1956 and charged with five counts of armed robbery. He was subsequently found guilty and sentenced to 12 years in the Maryland State Reformatory for Men. In 1971, Genco was indicted by a Federal Grand Jury in the District of Maryland and charged with violation of Title 18, United States Code, Section 1955. This case was dismissed by the Government in 1973.

³ On June 25, 1974, your affiant reviewed the Federal Bureau of Investigation Identification Record for Albert Isella

Informant number one advised your affiant on June 24, 1974, that as of that date Isella makes at least one "lay-off" call daily between 3:00 and 3:30 p.m. Isella makes this call to a numbers backer who lays-off to Isella. Informant number one also stated that the backers of the illegal numbers operation settle up their accounts with the lay-off people between Monday and Wednesday of each week for the previous week's work. Some of the backers appear personally at London's office in the basement of 1202 North Charles Street⁴ for the purpose of discussing the financial status of their accounts. Informant number one obtained this information from a backer involved in this operation.

(Footnote 3 continued)

under FBI record number 398 594 E. This record indicated that Isella had been arrested on six different occasions on gambling or gambling related charges in the Baltimore area. On one of these arrests, he was sentenced to one year at the Maryland House of Correction, sentence suspended, to pay \$1,000 and costs.

Special Agents Don L. Hubbard and Robert H. Twigg advised your affiant on June 25, 1974, that they were conducting a surveillance on Albert Isella on March 27, 1974, at which time they observed him throw certain papers out of his car on Philadelphia Road at approximately 9:54 a.m. Special Agent John F. Donohue advised your affiant that he had recovered these papers in the middle of the road directly in front of 8413 Philadelphia Road, Baltimore, and that these same papers had been submitted to the FBI Laboratory for analysis. The FBI Laboratory indicated that the submitted material was of the type found in and associated with the numbers operation handling wagers of three digit numbers. These items were of the type possessed by one in the supervisory level of the operation as opposed to a mere bettor. They also found that several of the wagers were in the even amounts which suggested the possibility that these were lay-off wagers.

⁴ On July 18, 1974, your affiant reviewed the records of the Maryland Department of Licensing and Regulation which

Informant number one advised that on Wednesday morning, May 22, 1974, Richard Genco was observed by him in Robert London's office in the basement of 1202 North Charles Street and that he had learned from others involved in the illegal gambling business that Genco and London had a conversation in the office regarding settling up the previous week's "lay-off". Informant number one advised that Albert Isella advised him that as of May 22, 1974, he personally goes to London's office on Charles Street in the mornings during the first of the week to discuss with London matters that arise in relation to the "lay-off."

On June 19, 1974, Special Agent Arthur S. Hamilton advised your affiant that on that date informant number two had advised that Albert Isella is currently involved in a major lay-off business for the Baltimore area with Robert "Fifi" London.

Informant number two also advised that as of June 19, 1974, that Isella settles up with London for the lay-off every Monday morning between approximately 10:30 a.m. and 12:00 noon at London's office at 1202 North Charles Street, Baltimore, Maryland.

Informant number two is able to furnish this information as a result of his association with principals of this particular gambling operation and from having been present during one such meeting between Isella and London, at 1202 North Charles Street, Baltimore, Maryland.

Informant number three advised your affiant on May 7, 1974, that Richard Genco and Robert "Fifi" London are currently conducting the major gambling "lay-off" operation for the Baltimore area. Informant number three has learned this

(Footnote 4 continued)

disclosed that 1202 North Charles Street, Baltimore, Maryland, is the address of the Aldon Bonding Company, an agency licensed to underwrite bail bonds in the State of Maryland.

information through conversations with Genco during the past week regarding the "lay-off" business. Informant number three advised that as of this date an unknown male will call the individual numbers backers on a daily basis between the hours of 1:00 and 3:30 p.m. in order to accept lay-off bets. Informant number three stated that Genco will settle up with certain individual backers on Monday, Tuesday, and Wednesday evenings for the previous week's lay-off bets. The settling up involves an exchange of money only and the backer is generally advised in advance what he owes or what is owed to him for the previous week's work. Informant number three further advised on May 23, 1974, that during the past week he has observed that Genco keeps a list of numbers accounts in his automobile in the event the backers question what is owed. Informant number three also advised that from his personal observations this list contained code names for at least one dozen numbers backers and that the total tally for the previous week's lay-off for that particular list was approximately \$20,000.

Informant number three advised on June 3, 1974, that he had learned through conversations with Melvin Eugene Brzostek⁵ which occurred during May, 1974, that Brzostek is the backer of a large numbers operation handling approximately twelve writers. Informant number three advised that he had learned from Richard Genco during the same period that Brzostek is laying off to Genco.

⁵ On June 26, 1974, your affiant reviewed FBI record number 827 215 G which indicated that Melvin Eugene Brzostek was arrested once by the Baltimore City Police Department in 1968 for lottery charges. No disposition on this charge was available. The same record indicated that Brzostek was arrested in 1972 on Federal gambling charges. A further review of these records indicated that Brzostek subsequently pleaded guilty to the Federal gambling charges.

Informant number three further stated that he knew through personal contact with Genco that Genco would contact London in order to change the track from which the winning number for the day would be determined for the Baltimore area. Informant number three advised that it is the custom in the gambling community in Baltimore for this type of change to be made by the principal figure in the "lay-off" business. Informant number three also advised that he has learned through conversations during the last month with numbers backers who lay-off to Albert Isella that Isella is also a partner in the lay-off operation with London and Genco.

Informant number three advised your affiant on July 18, 1974, that Richard Genco had settled up with various backers during the first half of this month. This source further advised that he has learned from Genco that Genco, London, and Isella are currently partners in the lay-off operation. This source advised that through his conversations with Genco and observations made by informant number three in London's office in the basement of 1202 North Charles Street that certain backers settle up at London's Office with London personally while other backers settle up either with Genco or Isella at other locations. The source further advised that 121 had been the winning number for Saturday, July 13, 1974, and that London, Genco, and Isella had taken a substantial loss on "lay-off" from individual backers. As a result of this it had been necessary for London, Genco, and Isella to get money to various backers who had "laid-off" this number to them. The source further advised that Melvin Eugene Brzostek continues as of this date to "lay-off" heavily bet numbers from his operation to Genco.

Informant number four advised your affiant on June 11, 1974, that he had learned through conversations with Orva Elerson "Lucky" Robinson during the past week that Robinson's numbers operation, which through personal observation he estimated to be in excess of \$16,000 a week, was laying off to Robert "Fifi" London. This source further advised that he had learned during the past week through individuals involved

in Robinson's numbers operation that "Lucky" Robinson's brother, Ambrose Robinson, is also presently involved as a backer in an illegal numbers lottery and is possibly connected with his brother "Lucky's" operation.⁶ Informant number four advised your affiant on August 1, 1974, that through contact with Orva Elerson "Lucky" Robinson that Robinson still maintained a large numbers operation and continued to lay-off numbers to Robert "Fifi" London.

⁶ On June 26, 1974, your affiant reviewed FBI record number 380 863 E for Orva Elerson Robinson which indicated that he had five prior arrests. No dispositions were available on this record.

Special Agent Kevin Foley advised your affiant on July 8, 1974, that he, along with another Special Agent of the Baltimore FBI Office, interviewed Orva Elerson Robinson regarding an alleged Federal violation by Robinson. During the course of this interview, Robinson stated that Ambrose Wilson Robinson was his brother.

On June 26, 1974, Special Agent Byron E. Foye advised your affiant that on the same date he checked the arrest record of Ambrose Wilson Robinson, date of birth April 28, 1915, at Central Records, Baltimore City Police Department, Baltimore, Maryland, which revealed that Ambrose Robinson, FBI Number 828 629 E, has an FBI record indicating three arrests for gambling related violations, and one arrest for bribery, all by the Baltimore City Police Department. Robinson pleaded guilty and was fined \$250.00 plus court costs for a gambling arrest dating back to October 19, 1957.

Baltimore City Police Department records further revealed that on Ambrose Robinson's most recent arrest for bribery that he pleaded guilty to attempting to bribe Sergeant Howard Peacock, Baltimore City Police Department, to influence him in the performance of his official duty in a gambling related case entitled the State of Maryland vs. Alfred Robinson and Bernice Voss. Ambrose Robinson received an eight year suspended sentence plus a \$5,000 fine plus court costs.

Special Agent John C. Bonner advised your affiant that on June 20, 1974, informant number five had advised him that Ambrose Robinson was currently the backer of a major numbers lottery operation which lays-off between \$10,000 and \$12,000 a week to Robert "Fifi" London. This source learned this information through conversation with one of the principals in this operation. Informant number five advised that he had learned that on June 19, 1974, the number 210 had been the winning number and that certain backers who had laid this number off to "Fifi" had gone to London's Office at 1202 North Charles Street to collect the money in order to pay off the winners.

Informant number six advised Special Agent David E. Faulkner on May 31, 1974, who advised your affiant, that Robert John Thibou⁷ is presently backing a large scale numbers operation handling between \$80,000 and \$90,000 in weekly wagers. Informant number six advised that Thibou is either a partner of Robert "Fifi" London or lays off to London.

ROBERT "FIFI" LONDON - ALBERT ISELLA SURVEILLANCE

Special Agent Thomas A. Kelley advised your affiant that on June 17, 1974, he had maintained a surveillance in the

⁷ On June 20, 1974, Special Clerk Patrick W. Marshall, Baltimore Federal Bureau of Investigation, caused a review to be made of the records of the Baltimore City Police Department which indicated that Robert John Thibou had been arrested on six different occasions by the Baltimore City Police Department on various charges. In 1963, he was charged with maintaining a house for gambling and fined \$1,000 plus costs. Also he was charged with operating and maintaining a gambling device and fined \$500 plus costs. On three subsequent occasions involving gambling charges he was either found not guilty or no disposition was available.

vicinity of 1202 North Charles Street beginning at 9:30 A.M. At approximately 9:44 A.M. Special Agent Kelley observed Robert London come out of 1202 North Charles Street and place money in a parking meter located in front of 1202 North Charles Street. London then re-entered 1202 North Charles Street. At approximately 10:26 A.M. Special Agent Kelley observed Albert Isella entering 1202 North Charles Street. Isella exited this location at approximately 10:42 A.M.

ALBERT ISELLA SURVEILLANCE

Special Agent Don L. Hubbard advised your affiant that on July 1, 1974, at approximately 10:45 A.M. he observed Albert Isella park a blue over white Chevrolet, Maryland license HH 4962 in front of 1202 North Charles Street. On this same date, your affiant observed Isella entering 1202 North Charles Street at approximately 10:44 A.M. Special Agent Hubbard advised that Isella was observed by him to exit North Charles Street at approximately 11:10 A.M. on this date.

ROBERT "FIFI" LONDON - AMBROSE ROBINSON SURVEILLANCE

Special Agent Philip G. Cabaud, Jr., advised your affiant that on June 19, 1974, he had maintained a physical surveillance in the vicinity of 1202 North Charles Street. Special Agent Cabaud advised that during the course of this surveillance he had observed Robert "Fifi" London at approximately 10:41 A.M. exit 1202 North Charles Street and then re-enter this location at approximately 10:45 A.M. At approximately 11:27 A.M. a stocky built Negro male was observed entering 1202 North Charles Street and at approximately 12:05 P.M. this same Negro male was observed exiting 1202 North Charles Street.

Special Agent William J. C. Agnew, Jr., advised your affiant that on this date he had observed the aforementioned Negro male coming from the vicinity of 1202 North Charles Street at approximately 12:05 P.M. and entering a late model

Cadillac bearing Maryland license GH 4752⁸ and driving from the area.

**B. INFORMATION CONCERNING USE OF TELEPHONE
NUMBER (301) 679-6473 BY THE GAMBLING
BUSINESS**

Informant number six advised Special Agent David E. Faulkner on May 31, 1974, that Bobby Himes⁹ is presently making the lay-off calls for Robert "Fifi" London. Informant number six has learned this through conversations with a principal in the lay-off operation. This principal in the operation indicated to informant number six that London's lay-off business

⁸ On June 24, 1974, your affiant caused a check to be made of the records of the Maryland Motor Vehicle Administration through the Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license GH 4752 is for a 1971 four-door Cadillac registered to Ambrose Wilson Robinson, 410 Ivy Church Road, Baltimore, Maryland.

On June 26, 1974, Special Agent Philip G. Cabaud, Jr., advised your affiant after viewing a Baltimore City Police Department photograph dated June 13, 1972 of Ambrose W. Robinson that this photograph was identical to the individual entering at 11:27 A.M. and exiting at 12:05 P.M. from 1202 North Charles Street on June 19, 1974.

⁹ On June 20, 1974, the records of the Baltimore City Police Department were caused to be reviewed by Special Clerk Patrick W. Marshall. These records indicated that Robert Leroy Himes, 2803 Indiana Avenue, had been arrested on approximately 20 occasions by the Baltimore City Police Department and has been found guilty on five different occasions on charges of larceny, assault, false pretense, drunk on a public street and resisting arrest.

will total between \$70,000 and \$90,000 weekly in lay-off bets. Informant number six advised that Himes handles the lay-off work from a telephone in his home in the Pasadena, Maryland, area, and is paid approximately \$300 a week for this.

Informant number six advised Special Agent Jerry W. Bastin on June 5, 1974, who advised your affiant that Himes is presently making the lay-off calls from his home in the Pasadena area. Informant number six advised that there were two telephones at this location and the telephone which was not being used for handling the lay-off was telephone number 301-255-1328.¹⁰ Informant number six stated that Himes made use of the second telephone at this location to make the outgoing lay-off calls and when he was out of town his wife, Susan, would handle the lay-off calls.

Informant number six advised Special Agent Jerry W. Bastin on June 17, 1974, who advised your affiant that Himes had been out of town during most of the last week of May, 1974, and that during this period his wife handled the lay-off calls in his absence. Informant number six has learned of the above through a principal in the operation.

Informant number three advised your affiant on June 11, 1974, that during the last week in May, 1974, the incoming calls to the backers from the lay-off office had been made by a female caller usually between the hours of 1:00 and 3:30 P.M. Informant number three advised that after this week the calls

¹⁰ On June 25, 1974, your affiant caused a review to be made of the records of the Chesapeake and Potomac (C&P) Telephone Company which indicated that telephone number 301-255-1328 is a non-published telephone installed on February 5, 1974, in the name of Mrs. Susan M. Price and located at 1476 Park Lane. These records also indicated that telephone number 301-255-1320 is an individual at the same location.

continued to be made by the male caller as before during the same time period. Informant number three stated he had overheard from Genco that the reason that the woman had been calling during the last week in May was because her husband, who usually handled the lay-off office, had been out of town during that week and she had been entrusted with handling the lay-off calls.

On June 11, 1974, your affiant observed a 1969 green Pontiac bearing Maryland license PS 8690¹¹ and driven by Robert Leroy Himes park in front of 1476 Park Lane, Pasadena, Maryland, at approximately 11:44 P.M. This vehicle remained at that location during the course of the surveillance which terminated at 3:30 P.M. on the same date.

On June 12, 1974, your affiant observed the above-described Pontiac parked at 1476 Park Lane, Pasadena, Maryland, at 10:15 A.M. This vehicle remained at that location until 3:55 P.M. at which time Robert Himes, an unknown white female, and a child exited 1476 Park Lane and got into this Pontiac with Himes driving. This vehicle proceeded from the area to Maryland Route 100 and then on Maryland Route 2.

On June 17, 1974, Special Agent John F. Donohue advised your affiant that he had initiated a surveillance on this date in the vicinity of 1476 Park Lane, Pasadena, Maryland, at 1:45 P.M. at which time he had observed the above Pontiac parked in front of 1476 Park Lane. This vehicle remained at this location from this time until approximately 5:30 P.M. at which time the surveillance was terminated.

¹¹ On June 24, 1974, your affiant caused a check to be made of the records of the Maryland Motor Vehicle Administration through the Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license PS 8690 is for a 1969 Pontiac, two-door, registered to Susan May Himes, 1476 Park Lane, Pasadena, Maryland.

On June 18, 1974, Special Agent John F. Donohue advised your affiant that on this date he had maintained a surveillance from 2:15 P.M. to 5:15 P.M. in the vicinity of 1476 Park Lane, Pasadena, during which time this vehicle remained parked in front of this location.

On June 19, 1974, Special Agents John F. Donohue and Ronald B. Miller advised your affiant that on this date at approximately 2:16 P.M. they observed a 1969 green Pontiac bearing Maryland license PS 8690 driven by a white male who appeared to be identical with Robert Leroy Himes turn off Bodkin Road onto Park Lane in Pasadena, Maryland. At approximately 2:18 P.M. Special Agent John F. Donohue observed this same vehicle parked at 1476 Park Lane between 2:18 and 3:50 P.M. This vehicle remained parked at this location. At 3:56 P.M. Special Agents Ronald B. Miller and John F. Donohue observed this same Pontiac being driven by Robert Leroy Himes proceed from Park Lane to Bodkin Road.

On June 25, 1974, Special Agent John F. Donohue advised your affiant that he had conducted a surveillance in the vicinity of 1476 Park Lane, Pasadena, Maryland, between 3:05 P.M. and 4:07 P.M. during which time this vehicle was observed on several different occasions to be parked in front of this location.

The records of the Chesapeake and Potomac (C&P) Telephone Company, as checked by your affiant on June 26, 1974, indicated that telephone service to 1476 Park Lane, Pasadena, Maryland, was to be discontinued as of June 26, 1974. This service was transferred in the name of Susan Price, 1028 Erwin Drive, Joppa, Maryland, effective June 25, 1974. The numbers utilized on Erwin Drive are a main number of 679-6477 and 679-6473 which is an auxiliary number.

On June 26, 1974, Special Agents Philip G. Cabaud, Jr., and Ronald B. Miller advised your affiant that on this date at 11:45 A.M. they observed Robert Leroy Himes in the doorway at 1028 Erwin Drive, Joppa, Maryland. A 1967 green Pontiac

bearing Maryland license PA 5707¹² and a 1969 green Pontiac bearing Maryland license PS 8690 were observed parked in the vicinity of this address. At 12:20 P.M. a check was again made at this address and the same vehicles were observed to be parked in the same location at this address. At 1:40 P.M. Robert Leroy Himes was observed to be standing in the front yard at this address.

On June 28, 1974, informant number six advised Special Agent Jerry W. Bastin who advised your affiant that Bob Himes and his wife Susan had moved from his residence in Pasadena, Maryland to Joppa, Maryland. This move had occurred during the last week of June, 1974. Informant number six further advised that he had overheard Himes state that he was still handling the lay-off office for "Fifi" London at his new residence in Joppa, and that London had called him at this location on at least one occasion to take care of matters that related to the "lay-off" business. Himes was overheard to state that he used the same telephone set up in Joppa as he had used in Pasadena and that the phones were in the name of his wife Susan and that they utilized the auxiliary phone to make the daily lay-off calls to the different backers.

Informant number three advised your affiant on July 3, 1974, that he had been told by an individual who was receiving a lay-off call from Robert "Fifi" London's lay-off office that the lay-off call was currently being made by the same individual who had been making the lay-off call in May with the exception of the last week in May when the caller was a female. This

¹² On February 26, 1974, your affiant caused a check to be made of the records of the Motor Vehicle Administration for the State of Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland license PA 5707 is for a 1967 Pontiac two-door, registered to Susan May Himes, 1476 Park Lane, Pasadena, Maryland, and described as a white female, 5'2" tall, 120 pounds, date of birth June 8, 1948.

source advised that this call continued to be made between 3:00 and 3:30 each day.

Informant number three advised your affiant on July 18 and 30, 1974, that as of these dates one of the individual backers is continuing to receive the daily incoming telephone call between 1:00 and 3:30 P.M. from the lay-off office maintained by London. The source knows of this through direct contact with the individual receiving this call.

Special Agents Ronald B. Miller and Philip G. Cabaud, Jr., advised your affiant that on July 1, 1974, they had observed Robert Himes exit a green Pontiac, Maryland license PS 8690 at 1028 Erwin Drive, Joppa, Maryland. This occurred at approximately 1:50 P.M. This vehicle was observed to still be parked at this location at 3:15 P.M. on this date.

Special Agent Ronald B. Miller advised your affiant that on July 2 and 3, 1974, he had maintained surveillance in the vicinity of 1028 Erwin Drive. On July 2, 1974, between 3:00 and 3:30 P.M., he observed a green Pontiac, Maryland license PA 5707 (previously noted to be registered to Susan Himes) parked at 1028 Erwin Drive. On July 3, 1974, Special Agent Ronald B. Miller observed the two Pontiacs previously noted to be registered to Susan Himes, parked at 1028 Erwin Drive between approximately 12 noon and 2:00 P.M.

Informant number one advised your affiant on July 8, 1974, that for the past two weeks one of the individual backers who had previously been receiving a lay-off call from Albert Isella was now receiving this call from an individual known as Bobby or a woman identified as Bobby's wife. This source also advised that through conversation by a principal in this gambling operation that "Fifi" London was maintaining an office in Joppa, Maryland, for the purpose of calling the offices of numbers backers on a daily basis between the hours of 1:00 and 3:30 P.M. This source further advised that he had learned that

this individual in Joppa maintained his records on water soluble paper and that once a day he would either:

- (1) Call these records to London, Isella or Genco.
- (2) See that the records are personally delivered to one of the three named in (1) above.

Informant number one advised Special Agent David E. Faulkner on August 2, 1974, who advised your affiant, that Robert Fifi London, Albert Isella and Richard Dick Genco continue as of this date to operate the major lay-off operation for the Baltimore area. This source advised that he has learned this information through direct contact with one of the principals involved during the past week. Informant number one further advised that he has learned through direct contact with a backer who laid off to London during the past week that this individual continues to receive a daily lay-off call from the same individuals who have been making this call in the past. Source advised that he had learned that this call was still currently made from Fifi London's "lay-off" office maintained in Joppa, Maryland.

Informant number six advised Special Agent David E. Faulkner on August 6, 1974, who advised your affiant that as of August 6, 1974, Bobby Himes and his wife, Susan, continue to handle the lay-off office for Robert "Fifi" London at their residence in Joppa, Maryland. This source advised that Himes continues to be paid approximately \$300 per week by London and is scheduled to be paid Wednesday, August 7, 1974, for the previous week's service. The source learned this information through direct contact with one of the principals involved in this operation during the past week. This source advised that Acme News Service is presently providing information on race results from which the winning number is determined. This source further advised that Himes is currently using this service to determine the winning number for lay-off purposes.

On July 24, 1974, United States District Judge R. Dorsey Watkins granted an Order authorizing the use of a device to

register telephone numbers called from telephone number 301-679-6473, subscribed to by Susan M. Price, 1028 Erwin Drive, Joppa, Maryland. This Order was authorized for a period of 20 days from the date of the attachment of this device or until the attainment of the authorized objective.

Set fourth below are the relevant telephone numbers called, the subscribers to the telephone numbers called, and the dates and times that these numbers were called:¹³

| <u>TELEPHONE NUMBER</u> | <u>SUBSCRIBER</u> | <u>DATES AND TIMES CALLED</u> |
|---|--|---|
| Location #1. 243-3519 | Mrs. E. L. Cheatom 1922 East 31st Street Baltimore, Maryland | August 1 - 5:59 p.m. August 2 - 6:00 p.m. August 6 - 5:58 p.m. August 7 - 5:58 p.m. August 8 - 5:59 p.m. 6:22 p.m. |
| Location #2. 255-6851 (See also 437-1645) | Peggy M. Francis 8380 Lockwood Road Pasadena, Maryland | August 3 - 6:43 p.m. 6:44 p.m. 6:45 p.m. |
| Location #3. 276-4016 | Mrs. Cleo Macon 1738 North Broadway Baltimore, Maryland | August 5 - 12:29 p.m. |

¹³ From my experience I know that the phone man in the lay-off operation makes daily calls to the backers or to someone designated by the backers to receive their lay-off wagers. I also know that the call is usually made to each backer or his representative at approximately the same time each day (except Sunday), and that it is not unusual for the location of the backers representatives who receive this call to change from time to time in order to avoid detection. I also know that at approximately 5:30 or 6:00 p.m. each day the phone man in the lay-off office calls the news service in order to determine the winning number. The phone man then customarily calls back the backers who have had a win on a number which has been laid off. In this telephone call arrangements are made concerning financing the pay off on the winning number. It has also been my experience that the principal figure or other high level associates will make daily contact with the lay-off office in order to determine how much lay-off has been taken on a winning number. This call will be made after the winning number is determined which is usually after 4:00 p.m. This is done in order for the principal to procure adequate funds to pay individual backers who have laid-off a winning number.

A. 66

| | | |
|-----------------------|--|--|
| Location #4. 276-1439 | J. L. Kirk 4114 East Lombard Street Baltimore, Maryland | July 30 - 2:32 p.m. August 2 - 2:37 p.m. August 3 - 2:32 p.m. August 5 - 2:31 p.m. August 6 - 2:28 p.m. August 7 - 2:35 p.m. August 8 - 2:31 p.m. |
| Location #5. 285-5025 | E. G. Doerr 1604 #4 Georges Court Baltimore, Maryland | August 1 - 6:03 p.m. August 3 - 6:20 p.m. August 6 - 6:01 p.m. |
| Location #6. 327-5723 | William H. Dudley 1717 N. Washington St. Baltimore, Maryland | July 30 - 1:07 p.m. August 2 - 1:07 p.m. August 5 - 1:15 p.m. August 5 - 12:32 p.m. August 5 - 1:11 p.m. (3) August 5 - 1:12 p.m. August 5 - 1:13 p.m. August 6 - 1:01 p.m. August 6 - 1:09 p.m. August 7 - 1:06 p.m. August 8 - 1:03 p.m. August 8 - 1:08 p.m. August 8 - 1:10 p.m. |
| Location #7. 327-5830 | W. A. Wood 1816 N. Castle Street Baltimore, Maryland | July 30 - 3:16 p.m. August 2 - 3:13 p.m. August 3 - 3:31 p.m. August 3 - 3:34 p.m. August 5 - 3:00 p.m. August 5 - 3:10 p.m. August 5 - 3:11 p.m. August 5 - 3:15 p.m. August 5 - 4:50 p.m. |
| Location #8. 342-0185 | Lucille McFadden 1727 N. Washington St. Baltimore, Maryland | August 1 - 6:01 p.m. August 2 - 6:01 p.m. August 3 - 1:03 p.m. August 5 - 6:16 p.m. August 5 - 6:05 p.m. August 6 - 5:59 p.m. August 7 - 5:56 p.m. August 8 - 1:09 p.m. |
| Location #9. 342-5589 | Mrs. Isiah Holmes 3102 E. Biddle Street Baltimore, Maryland | August 1 - 6:00 p.m. August 1 - 6:01 p.m. August 2 - 6:00 p.m. August 5 - 1:44 p.m. August 6 - 6:04 p.m. August 6 - 5:58 p.m. August 8 - 5:59 p.m. |

A. 67

Location #10. 367-5197

Sweetie Squire
4909 Litchfield
Baltimore, Maryland

July 30 - 2:19 p.m.
3:22 p.m.
3:24 p.m.
3:25 p.m.
August 1 - 5:58 p.m.
August 2 - 3:23 p.m.
3:32 p.m.
August 3 - 3:21 p.m.
3:44 p.m.
3:48 p.m.
6:22 p.m.
August 5 - 3:26 p.m.
6:00 p.m.
6:01 p.m.
August 6 - 2:19 p.m.
2:22 p.m.
3:21 p.m.
5:53 p.m.
August 8 - 5:58 p.m.

Location #11. 367-7196

Reverend Mrs. Pearline
Brooks
5015 Pimlico Road
Baltimore, Maryland

July 30 - 2:20 p.m.
August 2 - 2:21 p.m.
5:57 p.m.
5:58 p.m.
August 3 - 2:18 p.m.
August 5 - 2:20 p.m.
August 6 - 2:22 p.m.
3:21 p.m.
August 7 - 2:17 p.m.
2:19 p.m.
August 8 - 2:19 p.m.
2:21 p.m.

Location #12. 383-0959

Elm and Elm Market
2901 Clifton Avenue
Baltimore, Maryland

August 2 - 2:27 p.m.
August 3 - 2:08 p.m.
August 6 - 12:58 p.m.
August 7 - 2:46 p.m.
August 8 - 1:59 p.m.

Location #13. 437-0007
(See also
636-1845)

L. N. Holmes, Jr.
614 Lorca Avenue
Baltimore, Maryland

July 30 - 3:39 p.m.
August 2 - 3:50 p.m.
August 3 - 3:44 p.m.
August 5 - 3:45 p.m.
August 6 - 3:44 p.m.
August 7 - 3:43 p.m.
August 8 - 3:40 p.m.

Location #14. 437-1645
(See also
255-6851)

Peggy M. Francis
8380 Lockwood Road
Pasadena, Maryland

August 1 - 5:53 p.m.
August 2 - 5:55 p.m.
August 3 - 2:58 p.m.
5:25 p.m.
5:52 p.m.
5:56 p.m.
6:43 p.m.
August 5 - 3:02 p.m.
5:54 p.m.
August 6 - 5:22 p.m.
5:48 p.m.
August 7 - 5:22 p.m.

A. 68

Location #15. 466-4550

Mrs. I. Hall
3006 Chelsea Terrace
Baltimore, Maryland

July 30 - 3:34 p.m.
3:38 p.m.
3:42 p.m.
5:52 p.m.
July 31 - 3:32 p.m.
3:37 p.m.
3:43 p.m.
6:00 p.m.
August 1 - 5:57 p.m.
August 2 - 3:26 p.m.
3:36 p.m.
5:59 p.m.
August 3 - 3:28 p.m.
3:32 p.m.
6:21 p.m.
August 5 - 3:38 p.m.
3:53 p.m.
6:02 p.m.
August 6 - 3:25 p.m.
3:31 p.m.
3:36 p.m.
5:55 p.m.
August 7 - 3:33 p.m.
August 8 - 3:24 p.m.
5:57 p.m.

Location #16. 483-9159

J. Berry
4823 Truesdale Avenue
Baltimore, Maryland

July 30 - 1:25 p.m.
1:27 p.m.
1:35 p.m.
1:43 p.m.
1:47 p.m.
August 2 - 12:46 p.m.
1:11 p.m.
1:17 p.m.
1:50 p.m.
August 3 - 12:59 p.m.
1:00 p.m.
1:14 p.m.
1:41 p.m.
August 5 - 12:39 p.m.
1:11 p.m.
1:12 p.m.
1:24 p.m.
1:30 p.m.
1:35 p.m.
1:43 p.m. (2)
1:44 p.m.
1:45 p.m. (2)
1:46 p.m.
August 6 - 12:59 p.m.
1:42 p.m.
August 7 - 12:54 p.m.
1:38 p.m.
August 8 - 12:50 p.m.
12:51 p.m.
1:38 p.m.

A. 69

Location #17. 539-8137

John G. Fowlkes
1501 Federal Street
Baltimore, Maryland

July 30 - 12:07 p.m.
12:18 p.m.
August 2 - 12:13 p.m.
August 3 - 12:04 p.m.
August 5 - 12:02 p.m.
August 6 - 12:04 p.m.
August 7 - 12:05 p.m.
August 8 - 12:11 p.m.

Location #18. 547-0362

Miss S. J. West
734 W. Fayette Street
Baltimore, Maryland

July 30 - 3:31 p.m.
August 2 - 3:29 p.m.
August 3 - 3:32 p.m.
3:40 p.m.
August 5 - 3:32 p.m. (2)
3:35 p.m.
3:42 p.m.
3:44 p.m.
3:49 p.m.
5:00 p.m.

Location #19. 563-2128

R. Stokes
1716 E. Fayette Street
Baltimore, Maryland

July 30 - 1:25 p.m.
1:27 p.m.
1:29 p.m.
August 1 - 6:02 p.m.
August 2 - 1:11 p.m.
1:30 p.m.
6:02 p.m.
August 3 - 1:30 p.m.
6:19 p.m.
August 5 - 1:12 p.m. (2)
1:24 p.m.
6:06 p.m.
August 6 - 1:21 p.m.
6:00 p.m.
August 7 - 1:17 p.m.
1:22 p.m.
1:24 p.m.
1:33 p.m.
August 8 - 1:34 p.m.
6:00 p.m.

Location #20. 566-9206

Solomon S. Lesane
1416 Poplar Grove St.
Baltimore, Maryland

July 30 - 1:19 p.m.
1:35 p.m.
August 1 - 6:02 p.m.
August 2 - 1:31 p.m.
6:01 p.m.
August 3 - 1:35 p.m.
August 5 - 1:24 p.m.
1:30 p.m.
6:06 p.m.
August 6 - 1:26 p.m.
1:27 p.m.
6:00 p.m.
August 7 - 1:17 p.m.
1:37 p.m.
5:58 p.m.
August 8 - 1:28 p.m.
1:33 p.m.

A. 70

Location #21. 636-1845
(see also
437-0007)

L. N. Holmes, Jr.
614 Lorca Avenue
Baltimore, Maryland

July 30 - 3:31 p.m.

Location #22. 675-0017

Carolyn Cox
1852 E. Fayette Street
Baltimore, Maryland

July 30 - 12:22 p.m.
August 2 - 12:27 p.m.
August 3 - 12:36 p.m.
August 5 - 12:17 p.m.
August 6 - 12:16 p.m.
August 7 - 12:25 p.m.
August 7 - 12:22 p.m.
August 7 - 12:28 p.m.
August 8 - 12:24 p.m.

Location #23. 675-4460

O. Witt
2217 Mura Street
Baltimore, Maryland

July 30 - 12:32 p.m.
August 2 - 12:35 p.m.
August 3 - 12:43 p.m.
August 5 - 12:35 p.m. (2)
August 5 - 12:39 p.m. (2)
August 6 - 12:38 p.m.
August 7 - 12:35 p.m.
August 8 - 12:40 p.m.

Location #24. 685-1012

Acme News Service
206 W. Clay Street
Baltimore, Maryland

August 1 - 5:44 p.m.
August 1 - 5:49 p.m.
August 1 - 5:50 p.m.
August 2 - 5:50 p.m.
August 2 - 5:50 p.m.
August 3 - 5:20 p.m.
August 3 - 5:49 p.m.
August 3 - 6:46 p.m.
August 5 - 5:18 p.m.
August 5 - 5:45 p.m.
August 5 - 5:52 p.m.
August 6 - 5:19 p.m.
August 6 - 5:46 p.m.
August 7 - 5:18 p.m.
August 7 - 5:44 p.m.
August 7 - 5:48 p.m.
August 8 - 5:17 p.m.
August 8 - 5:23 p.m.
August 8 - 5:44 p.m.
August 8 - 5:50 p.m.

Location #25. 685-8615

Michael P. DeLorenzo
322 Albermarle Street
Baltimore, Maryland

July 30 - 2:23 p.m.
August 2 - 2:25 p.m.
August 3 - 2:21 p.m.
August 5 - 2:25 p.m.
August 5 - 2:33 p.m.
August 6 - 2:25 p.m.
August 7 - 2:21 p.m.
August 8 - 2:23 p.m.
August 8 - 2:28 p.m.

Location #26. 727-0015

Mrs. Alice Gaines
1109 Leadenhall Street
Baltimore, Maryland

August 1 - 5:58 p.m.
August 2 - 5:58 p.m.
August 3 - 6:23 p.m.
August 5 - 5:25 p.m.
August 5 - 6:00 p.m.
August 6 - 5:54 p.m.
August 7 - 5:54 p.m.
August 8 - 5:58 p.m.

A. 71

Location #27. 727-7207

Ronald A. Fonte
717 Lovegrove Street
Second Floor
Baltimore, Maryland

August 2 - 1:41 p.m.

Location #28. 732-7782

Major Payne III
2641 Beryl Avenue
Baltimore, Maryland

July 30 - 2:11 p.m.
August 1 - 5:56 p.m.
August 2 - 2:04 p.m.
5:57 p.m.
August 3 - 2:00 p.m.
5:27 p.m.
5:55 p.m.
6:11 p.m.
6:19 p.m.
August 5 - 5:24 p.m.
5:59 p.m.
August 6 - 2:04 p.m.
5:27 p.m.
5:51 p.m.
August 7 - 2:02 p.m.
5:26 p.m.
5:54 p.m.
August 8 - 2:03 p.m.
5:31 p.m.
5:55 p.m.

Location #29. 752-3930

Charles Hurtt
1523 North Dallas
Baltimore, Maryland

August 1 - 5:59 p.m.
August 2 - 6:00 p.m.
August 3 - 6:14 p.m.
August 5 - 6:03 p.m.
August 6 - 5:57 p.m. (2)
August 7 - 5:56 p.m.
August 8 - 5:58 p.m.

Location #30. 789-7652

Dorothy M. Davis
115 Warwickshire Lane
Glen Burnie, Maryland

July 30 - 2:51 p.m.
August 2 - 2:49 p.m.
August 3 - 2:47 p.m.
3:13 p.m.
August 5 - 2:50 p.m.
3:20 p.m.
3:47 p.m.
August 6 - 2:51 p.m.
August 7 - 2:52 p.m.
3:18 p.m.
August 8 - 2:50 p.m.

Location #31. 789-9755

Coin operated phone
Smuck and Sons
110 Ordinance Road
Linthicum, Maryland

August 6 - 2:59 p.m.
August 7 - 3:01 p.m.
August 8 - 3:05 p.m.

Location #32. 866-4841

George Dorbett
1540 Rosewick Avenue
Baltimore, Maryland

July 30 - 3:14 p.m.
August 2 - 3:10 p.m.
August 3 - 3:02 p.m.
3:17 p.m.
August 5 - 3:11 p.m.
August 6 - 3:10 p.m.
August 7 - 3:14 p.m.
August 8 - 3:15 p.m.

Location #33. 947-1719

D. Pope
139 North Culver
Baltimore, Maryland

| | |
|------------|-----------|
| August 1 - | 5:57 p.m. |
| August 2 - | 5:59 p.m. |
| August 3 - | 6:20 p.m. |
| August 5 - | 6:02 p.m. |
| August 6 - | 5:54 p.m. |
| | 6:00 p.m. |
| August 7 - | 5:55 p.m. |
| August 8 - | 5:56 p.m. |

Lt. George Andrew, Baltimore City Police Department, Vice Squad, furnished your affiant on August 5, 1974, a copy of Baltimore City Police Department complaint number 3G48954. This report reflected that on July 23, 1974, officers of the Baltimore City Police Department Vice Squad executed a search warrant for 1738 N. Broadway Street, Baltimore, Maryland (location number three, *supra*). This search resulted in the seizure of lottery records and the arrest of Cleo Macon on local lottery charges.

Sgt. Michael Gray, Baltimore City Police Department, Vice Squad, advised your affiant on August 6, 1974, that on August 5, 1974, he and other officers of the Baltimore City Police Department Vice Squad had executed a search warrant for 1816 N. Castle Street, Baltimore, Maryland (see location number seven, *supra*). Gray advised that John Leslie Woods and William Woods were located on the premises and charged with local lottery charges. The execution of this search warrant resulted in the seizure of approximately 60 lottery slips, 10 adding machine tapes, \$1,081 in cash and \$3,252.90 in numbers play. All of the numbers lottery which was seized and dated was dated for Monday, the day of the execution of this warrant. Sgt. Gray advised that they were present at this location between approximately 2:10 P.M. and 3:15 P.M., during this time the telephone located at this address, telephone number 327-5830, rang several times. The authorized device recording calls from 679-6473 registered four calls to telephone number 327-5830 between 3:00 P.M. and 3:15 P.M. on this date.

On August 6, 1974, at 2:59 P.M., a phone call was registered from telephone number 679-6473 to telephone number 789-9755. (See location 31, *supra*). Special Agent Don L. Hubbard advised your affiant on August 7, 1974, that on this

date he had conducted a surveillance beginning at 10:25 A.M. on the telephone booth on Old Ordinance Road, Linthicum, Maryland, and observed this phone to bear telephone number 789-9755. At 2:59 P.M. Special Agent Hubbard observed a 1973 Buick, Maryland License KJ 9371¹⁴ drive up to this phone booth and a Negro male exit the Buick and enter the telephone booth. At 3:01 P.M., he observed this same Negro male with the telephone receiver in his hand and at 3:06 P.M. he observed this same individual leave the telephone booth and return to the Buick. Special Agent Hubbard advised your affiant that he had reviewed a Baltimore City Police Department photograph of John Wesley Woods taken August 5, 1974, after the raid on location 7, *supra*, and determined this photograph to be identical to the individual he observed in the phone booth. On August 7, 1974, a telephone call was registered from telephone number 679-6473 to 789-9755 at 3:01 P.M.

Special Agent John F. Donahue, Baltimore, Federal Bureau of Investigation, advised your affiant on August 5, 1974, that he is in charge of an illegal gambling investigation involving Acme News Service (see location 24, *supra*). Special Agent Donahue advised that this investigation had resulted in the indictment of Acme News Service, Inc., the owners and employees on August 22, 1973, for violation of Title 18, U.S.C., Section 1955. Special Agent Donahue advised that his investigation revealed that Acme News Service, prior to indictment, had been providing bookmakers with the race results on a daily basis, as well as the winning daily number for the day. Sgt. Michael Gray, Baltimore City Police Department, Vice Squad,

¹⁴ On August 7, 1974, your affiant caused a check to be made of the Maryland Motor Vehicle Administration through the Maryland Inter-Agency Law Enforcement System (MILES) Computer which indicated that Maryland License KJ 9371 is for a 1973 Buick, registered to Leslie John Woods, Negro male, 5'6", 145 lbs., date of birth 12/12/22, address, 4915 Gunther Avenue, Baltimore, Maryland.

advised your affiant August 6, 1974, that Acme News Service was currently providing bookmakers in the Baltimore area with the winning number on a daily basis, except Sunday. Sgt. Gray knows of this through his own investigation of illegal gambling activities in the Baltimore area.

On August 5, 1974, your affiant reviewed certain records of the Baltimore Office of the Federal Bureau of Investigation, which indicated that Major Payne, FBI # 35443L8 had been charged on September 6, 1972 with violation of the Federal Illegal Gambling Statute. He was found guilty and sentenced on April 11, 1974 to three years probation and a \$500 fine (see location 28). Investigation in this matter indicated that Major Payne maintained a large scale numbers gambling operation under Raymond Torrain, who was also indicted on Federal gambling charges in the same matter.

Informant number three advised your affiant on July 30, 1974, that he had learned through a backer of a large scale numbers operation during the past week that one of the backers who laid off to Robert "Fifi" Lond's operation currently maintains an "office" at 1540 Rosewick Avenue, Baltimore, Maryland (see location 32, *supra*). This informant further advised that this particular backer continues to receive a daily call from individuals who handle the lay-off office for London. This source has learned this through conversations with a principal involved in this operation during the past week.

On August 5, 1974, the series of calls usually made in the evening were again made between approximately 5:00 P.M. and 6:07 P.M. At 6:07 P.M., the number 374 was recorded on the machine on three separate occasions. For this to have occurred, the individual using the telephone at 1028 Erwin Drive would have had to push these numbers on the phone. Informant number four advised your affiant on August 5, 1974, that the winning number for this date was 374.

On August 29, 1974, Informant Six advised Special Agent David E. Faulkner, who advised your affiant that Bobby Himes

is currently using the same telephone set-up at his residence at Joppa, Maryland, as before in order to make daily telephone calls to the offices of numbers backers in the Baltimore area. These calls are for the purpose of accepting lay-off wagers from these backers as a part of Robert London's lay-off operation. Informant Six knows of this through overhearing conversations by Himes as well as through conversations with associates of Himes.

Informant Six advised that through the same means he is aware that the number of people who know the telephone number utilized by Himes is limited and that Robert London is one of the few people who is aware of this telephone number. Informant Six also learned that London calls Himes at this telephone number at Joppa, Maryland, on a regular basis to determine the extent of the lay-off business.

During the course of monitoring the aforementioned device to register telephone numbers called from telephone number 301-679-6473 in the name of Susan Price, 1028 Erwin Drive, Joppa, Maryland, there were a series of incoming calls noted. This series is:

| <u>Date</u> | <u>Time</u> |
|-------------|-------------|
| July 30 | 5:26 p.m. |
| July 31 | 5:28 p.m. |
| | 5:36 p.m. |
| | 6:10 p.m. |
| August 1 | 5:28 p.m. |
| | 5:50 p.m. |
| August 2 | 2:46 p.m. |
| | 5:24 p.m. |
| | 5:49 p.m. |
| | 5:52 p.m. |

| <u>Date</u> | <u>Time</u> |
|-------------|-------------|
| August 3 | 3:07 p.m. |
| | 6:02 p.m. |
| | 6:09 p.m. |
| | 6:29 p.m. |
| | 6:40 p.m. |
| | 6:48 p.m. |
| | 6:50 p.m. |
| August 6 | 5:47 p.m. |
| | 6:14 p.m. |

Pursuant to a valid court order, authorized by Judge Joseph H. Young, United States District Court Baltimore on August 13, 1974, all conversations have been intercepted from Robert London's basement office at 1202 North Charles Street, Baltimore, Maryland, beginning on August 24, 1974. Robert London as of August 29, 1974, has been intercepted with individuals who had been identified as known numbers backers. The majority of these conversations has been of an incriminating nature and have involved conversations regarding London's accepting lay-off wagers from certain of these backers. Conversations between Richard Genco and London have also been intercepted and concern the handling of the lay-off wagers. During the course of conversations with Robert London, Albert Isella has been mentioned by London in a manner indicating that Isella is an integral part of the lay-off operation.

Section 803 of Title VIII, entitled Syndicated Gambling, or the "Organized Crime Control Act of 1970", Public Law 91-452, 90th Congress, approved October 15, 1971, amended chapter 95, Title 18, United States Code, by adding a new section, Section 1955, prohibition of illegal gambling businesses. Section 801 of Title VIII of this Act contains special findings that illegal gambling involves widespread use of, and has an effect on, interstate commerce and facilities thereof.

PRIOR INTERCEPTIONS

Pursuant to a Court Order signed by United States District Judge Alexander Harvey on February 18, 1971, an electronic surveillance of telephone number 301-433-4362 listed to Herman W. Neumyer, 1190 West Northern Parkway, Apartment 719, Baltimore, Maryland, was maintained by Special Agents of the Federal Bureau of Investigation, Baltimore, commencing on February 18, 1971, and terminating February 27, 1971.

The Order was obtained based on probable cause that violations of Title 18, United States Code, Section 1955 were taking place.

Of the approximately 281 calls intercepted during the above electronic surveillance of telephone number 301-433-4362, approximately 271 were incriminating; almost all relating to the conduct of a gambling operation. In connection with the above authorized electronic surveillance Richard Genco was monitored on at least five occasions. The majority of these interceptions involved a conversation between Genco and Herman Neumyer and the majority of the interceptions involved conversations which appear to relate to gambling activities. Further, during the course of this interception Lynda LaJeana Shade was intercepted more than 25 times; almost all of these calls relating to the conduct of a gambling operation.

On March 30, 1972, the Honorable R. Dorsey Watkins, United States District Judge, Baltimore, Maryland, signed an Order authorizing electronic interceptions of telephone communications from and to telephone number 301-821-1740 and other telephones located at Towson Ocean Pride Seafood Company, 1534 York Road, Baltimore County, Maryland, for a period of 15 days.

Of the approximately 1,173 calls intercepted during the course of the above authorized electronic surveillance, 118 were incriminating, almost all relating to the conduct of a gambling operation.

During the course of the above authorized electronic surveillance, Melvin Eugene Brzostek was monitored on two occasions, both conversations relating to the conduct of an illegal numbers operation.

On January 29, 1973, the Honorable Alexander Harvey, II, United States District Judge, District of Maryland, signed an Order authorizing interception of wire communications to and from telephone number 760-3342, subscribed to in the name of Joseph J. Stump and located at 106 Whip Lane, Glen Burnie, Maryland, and telephone number 760-3937, subscribed to in the name of Beverly A. Koellner, 106 Whip Lane, Glen Burnie, Maryland.

Communications were intercepted on these two telephone lines from February 1, 1973, to February 12, 1973. During that period, a total of approximately 259 calls were intercepted, approximately 134 of which involved the operation of a gambling business. Constantine Huditean was intercepted on approximately three occasions during the electronic surveillance, and all three occasions involved illegal gambling conversations.

CURRENT INTERCEPTION

On August 13, 1974, Judge Joseph H. Young, United States District Court, Baltimore, Maryland, signed an Order authorizing the interception of oral communications at 1202 North Charles Street, Baltimore, Maryland. Individuals named in this Order are Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, and Ambrose Robinson. This Order also involves alleged violations of Sections 1955 and 371 of Title 18, United States Code. Interception in this matter will not be initiated until such time as physical surveillances or other investigative procedures have indicated that either Robert "Fifi" London, Albert Carmen Isella or Richard "Dick" Genco are

present at 1202 North Charles Street, Baltimore, Maryland. It is, therefore, anticipated that implementation of this Order will result in interceptions of individuals herein named.

NEED FOR INTERCEPTION

The interception of such communications is necessary to the investigation for the following reasons:

1. The confidential informants described herein have categorically refused to testify in open Court for fear of their personal safety and that of their families.

2. Normal investigative techniques are unlikely to succeed:

- (a) Without the testimony of the above-mentioned informants it would be exceedingly difficult to prove the complete nature of the current gambling operation of Robert "Fifi" London, Albert Carmen Isella, Richard "Dick" Genco, Robert Leroy Himes, Susan Himes, Robert John Thibou, Melvin Eugene Brzostek, Orva Elerson "Lucky" Robinson, Ambrose Robinson and others as yet unknown.

- (b) It is doubtful that a search warrant, if obtained and executed, would result in obtaining gambling records sufficient to show the complete nature of this gambling operation. From my experience and the experience of other Agents, I know that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the offenses. This is particularly true in regards to evidence relating to the "lay-off" part of a gambling operation. I have found through my experience and the experience of other Special Agents who have worked on other gambling cases that gamblers frequently do not keep incriminating records. If such records have been maintained, usually gamblers, immediately prior to or during the physical search, destroy these records. Additionally, records that have been seized in past gambling

cases have generally not been sufficient to establish all of the elements of said offenses because such records are difficult to intercept and many times are of no significance without more complete knowledge of the gamblers activities.

(c) There are no known witnesses who could be relied upon to truthfully testify to the violations in question.

(d) Infiltration of the gambling operation by an undercover Agent does not appear to be possible in this case but even if such infiltration were possible, it would only be at the lowest level of the operation which would not result in evidence being obtained regarding involvement of the backers and the lay-off part of the operation. Nor would such infiltration, even if possible, ever be expected to discover the full scope and extent of the operation.

(e) Calling witnesses before the Grand Jury would not result in the gathering of sufficient evidence to uncover the full scope and extent of the operation. Only those individuals integrally involved in the operation at a high level have the requisite knowledge regarding the full scope and extent of the operation. Witnesses, even if immunized, are reluctant to incriminate themselves and their close working associates. Together their testimony would require immunization and non-prosecution of those who are the principals of the operation. But, even if obtained, their testimony is not corroborated.

3. Due to the manner in which the violations are carried out, the interception of these communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove the commission of this violation.

4. In view of the information developed, as set forth above, the activity to be electronically covered is believed to be a continuing conspiracy. It is therefore believed that the evidence sought will be obtained on a continuing basis on a number of days following the first receipt of the particular communications which are the object of this request. Therefore, it is requested that these interceptions not terminate when the sought communications are first obtained and that this authority continue for a period of 20 days thereafter.

/s/ JOHN D. HUNTLEY, JR.